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THE UNIVERSITY OF ALBERTA

LEGAL LIABILITY OF CANADIAN SCHOOL BOARDS AND TEACHERS FOR SCHOOL ACCIDENTS CAUSING PHYSICAL INJURIES TO STUDENTS

BY

© JAMES CYRIL COOZE

A THESIS
SUBMITTED TO THE FACULTY OF GRADUATE STUDIES AND RESEARCH
IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

DEPARTMENT OF EDUCATIONAL ADMINISTRATION

EDMONTON, ALBERTA
SPRING, 1989

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THE UNIVERSITY OF ALBERTA

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The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies and Research for acceptance, a thesis entitled **The Legal Liability of Canadian School Boards and Teachers for School Accidents Causing Physical Injuries to Students** submitted by James Cyril Cooze in partial fulfilment of the requirements for the degree of Doctor of Philosophy.

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Abstract

The main aim of this study was to examine the reasoning applied by Canadian courts (since 1867), in cases regarding tort liability for school accidents causing physical injuries to students, in order to determine the legal liability of Canadian school boards and teachers in this regard.

Data for the study were obtained from a computer search of reported court cases and from a careful manual search of the indices of the Canadian law reports. In analyzing the data, the court cases were grouped under two broad categories; namely, accidents **during** organized school activities and accidents **outside of** organized school activities. Each court case was briefed using the following 3-step process: (1) presentation of the material facts of the case, (2) presentation of the issue(s) involved in the case, and (3) presentation of the reasoning applied by the court in rendering judgment. The cases were then analyzed using the method of documentary analysis.

The study dealt with a total of 71 court cases from which a broad pattern of legal reasoning emerged. This pattern was woven from the legal

threads of reasoning applied by the courts with regard to the following: 'careful parent' standard, adequate supervision, potentially dangerous or inherently dangerous objects or activities, occupier's liability, contributory negligence, failure to instruct properly and pupil transportation.

On the basis of the legal reasoning applied by the courts in these cases, along with information obtained from interviews with persons knowledgeable in the field of liability insurance and school law, the writer developed a list of guidelines for school boards and teachers. These, if followed, may help reduce school accidents and, in cases of school accidents causing physical injuries to students, may help avert potential court action.

Acknowledgments

Acknowledgment for the accomplishment of this research study is given to many persons who helped the writer make it possible.

The writer wishes to express sincere thanks and appreciation to the members of his supervisory committee from the Department of Educational Administration, Dr. D. M. Richards, Dr. C. S. Bumbarger, Dr. D. Friesen, and Dr. K. L. Ward, as well as to Professor G. L. Gall of the Faculty of Law, for their help and support in carrying out this study. Particular mention must be made of the time and guidance given so generously by his advisor, Dr. D. M. Richards.

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Finally, the writer wishes to extend a special note of gratitude, appreciation and love to his wife, Sandra, who is with child, and to his sons, Jimmy and Justin, for their moral support, patience and understanding under less than desirable circumstances. This work is respectfully dedicated to them.

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CHAPTER I

NATURE AND SCOPE OF THE STUDY

Introduction

Each year numerous accidents happen to students in schools across Canada. Although most of these accidents may not result from teacher negligence, tort liability for physical injuries to students is still an area of utmost concern to teachers as they carry out their instructional and supervisory activities. Moreover, even though teachers are employed by a governmental agency, i.e., the school board, they are classified as employees rather than as public officers and, therefore, cannot claim immunity from liability. Instead, teachers are bound by one of the basic doctrines of common law which, according to Strahan (1973: 123), states that "every individual is liable for his own torts or wrongful acts, whether such acts are intentional or the result of negligence."

Statement of the Problem

Central to this study is the following research problem: to examine the reasoning applied by Canadian courts (since 1867), in cases regarding tort liability for school accidents causing physical injuries to students, in order to determine the legal status of Canadian school boards and teachers in this regard.

Sub-Problems

1. On the basis of the reasoning applied by the courts, what guidelines may be developed to help teachers and school boards prevent such accidents and possibly avoid potential litigation that may result from some of these accidents?

2. Why do some school boards end up in court while others do not for similar accidents which cause similar physical injuries to students?

3. What steps may be taken by school boards to avert possible court action with regard to school accidents which result in physical injuries to students?

Significance of the Study

Presently, there is considerable concern among school boards, administrators and educators regarding teacher liability. According to Keeler and Harrison (1982:16), two basic reasons for this concern are:

> First, the Supreme Court of Canada a few years ago awarded $859,000 to a student who was rendered a quadraplegic as a result of an accident in a physical education class. The implications of this case are far-reaching for both school boards and educators. There is now a much greater incentive for parents whose children are injured at school to risk the high cost of litigation in the hope of obtaining a large compensation award.
>
> Second, many school and off-campus activities are prone to accidents and therefore to possible litigation. The

> number of off-campus activities has increased dramatically in the past few years, thereby increasing the potential danger of an accident caused by teacher negligence.

In a similar vein, MacKay (1984:107) states that "the increase in litigation has occurred largely because the target of the lawsuit is no longer the local community school but large incorporated school boards and faceless insurance companies." Furthermore, he notes that in times of economic restraint, which is presently the case in Canada, "the number of lawsuits and the number of accidents are both likely to increase" due to the fact that fewer teacher aides will be hired, teacher-student ratios will probably increase, and old and defective equipment will less likely be replaced.

According to Kigin (1983:viii), teachers have become particularly vulnerable to charges of negligence brought by pupils and therefore a basic understanding of school law as it applies to teacher liability becomes increasingly important each year. Not only may the results of this study prove to be beneficial as a general guide to educators, but they may also be of some import to department of education officials, graduate students in educational administration, as well as others with an interest in school law. In addition, the results of this study may be of benefit to legislators, since law is not static; rather, it can be said to be very dynamic, in view of the fact that it is constantly being revised through legislation and judicial rulings.

Need for the Study

There has been only one thesis completed in Canada directly based on tort liability of teachers and school boards for school accidents causing physical injuries to students. That study was done by Lamb (1957) more than a quarter of a century ago. Since that time, much litigation regarding physical injuries to students resulting from school accidents has transpired. As well, many changes have taken place; for instances, school acts have changed, and school districts have grown larger and carry larger insurance policies in anticipation of possible lawsuits. In fact, with regard to the bases for the conclusions reached in his study, Lamb himself recognized the fluidity of the subject matter when he stated that

> these foundations, as it is realized, may change at any time. Statutes may be revised, added to, or repealed. They may also be interpreted by the courts as meaning something quite different from their apparent intent. Case law may change with changes in the social conscience and ideas of the times. And the expanding functions of the school may lead to a greater diversity of problems. (p.2)

Therefore, in view of the many changes that could have affected the legal status of school boards and teachers regarding tort liability for school accidents causing physical injuries to students during the past 30 years, there appears to be a need for a new Canadian study, such as this one, to examine the legal reasonings applied by the Canadian courts in determining the present legal status of school boards and teachers in this regard.

Methodology

The methodology used in this study is a particular type of descriptive research commonly referred to as documentary analysis. According to Best (1981:106), documentary analysis "is concerned with the explanation of the status of some phenomenon at a particular time."

Therefore, he notes that this method, since it involves the categorization of written data, is particularly suited for studies involving court decisions. Using this method, then, this study analyzes reported Canadian court cases since 1867 in order to determine the legal status of Canadian school boards and teachers with regard to tort liability for school accidents causing physical injuries to students. The following two subsections deal with the sources of data for this study and outline how the data were analyzed, respectively.

Sources of Data

In addition to consulting **The Canadian Abridgement** and the **Index to Canadian Legal Periodical Literature**, data for this study were obtained from a computer search as well as a careful manual search of the indexes of the following law reports:

Dominion Law Reports
Canadian Cases on the Law of Torts
Western Weekly Reports
Canada Supreme Court Reports
Alberta Law Reports
British Columbia Law Reports
Manitoba Reports
Newfoundland & Prince Edward Island Reports
Nova Scotia Reports
Ontario Reports
Saskatchewan Reports

Analysis of Data

In order to simplify the analysis of data, the court cases were grouped under two broad categories. Within these categories the cases were further sub-grouped as follows:

1. Accidents **during** organized school activities
    - (a) Accidents during physical education classes and extra-curricular sports
    - (b) Accidents in school laboratories and industrial shops
    - (c) Accidents during class excursions
    - (d) Accidents with regard to pupil transportation
    - (e) Accidents in the regular classroom

2. Accidents **outside of** organized school activities
    - (a) Accidents before school starts
    - (b) Accidents during recess
    - (c) Accidents during lunch hour
    - (d) Accidents after school hours

In each category, the cases were briefed using the following 3-step process:

1. Presentation of the material facts of the case
2. Presentation of the issue(s) involved in the case
3. Presentation of the reasoning applied by the court in rendering judgment

The cases were then examined as a whole in order to extract from these cases the common threads of legal reasoning applied by the courts in resolving the various issues.

In addition to the case analyses, semi-structured interviews were held with persons knowledgeable in the field of school law and liability insurance in order to gather information based on two of the sub-problems; namely, why do some school boards end up in court while others do not for similar accidents causing similar physical injuries to students? and, what steps might school boards take to avoid court action regarding accidents causing physical injuries to students?

Delimitations of the Study

1. Court cases analyzed in this study were delimited to Canadian court cases only, although cases from the United States and Britain were discussed in cases where they served as a precedent for Canadian court cases.

2. In addition to the review of relevant Canadian literature, this study also includes a review of relevant American literature because of the fact that there has been relatively little research done in Canada with regard to the problem investigated in this study. The reason for including the American review is twofold: first of all, it is hoped that its inclusion will help the reader acquire a broader understanding of the various dimensions of the problem investigated; and, secondly, it is hoped that its inclusion will provide a greater insight into the different approaches that may be taken in carrying out an investigation of this nature.

3. Quebec court cases were excluded from this study due to the fact that the Quebec legal system (known as the Quebec Civil Code) is

based on the Napoleonic Code; and, therefore, the doctrines of precedent and stare decisis, which help form the backbone of the common law system, do not have the same influence in the Quebec legal system as in the other Canadian provinces. In comparing and contrasting the common law and civil law systems in Canada, Gall (1983:23) points out the fundamental differences between these two legal systems as follows:

> The civil law system begins with an accepted set of principles. These principles are set out in the civil code. Individual cases are then decided in accordance with these basic tenets. In contrast, the common law approach is to scrutinize the judgments of previous cases and extract general principles to be applied to particular problems at hand. This difference in approach helps to explain the different manner in which the two systems regard the doctrine of stare decisis.

4. Although chapter III, in dealing with the theory of tort liability, mentions that there are three grounds on which to impose tort liability - namely, strict liability, intentional torts, and negligence - this study deals exclusively with the last. In other words, litigation regarding intentional torts and strict liability were not included in this study.

5. No attempt was made to analyze the monetary awards rendered by the courts in the various cases.

Definitions of Terms

Assuming that most readers of this thesis do not have an extensive knowledge of legal terminology, definitions for all legal terms used herein have been provided in a Glossary of Legal Terms shown as Appendix A. However, legal definitions of a few key terms are provided below. **Black's Law Dictionary** was used as the source for these definitions.

Liability. The condition of being subject to an obligation or responsibility which is enforceable by a court.

Negligence. The failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or the failure to do what a person of ordinary prudence would have done under similar circumstances.

Physical injury. Physical pain, illness or any impairment of physical condition. "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Principle of law. A comprehensive rule or doctrine which furnishes a basis or origin for others; a settled rule of action, procedure, or legal determination.

Tort. A civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages.

Organization of the Study

This study is organized into six chapters, with chapter I providing an introduction to the study by describing the problem statement, significance of the study, need for the study, methodology, sources of data, analysis of data, delimitations, and definition of terms. A review of relevant Canadian and American research is given in chapter II. Chapter III discusses the theory of the tort of negligence, the 'careful parent' standard and the school board as a corporation. A presentation and an analysis of the data comprise chapter IV. Chapter V deals with the information gathered from interviews regarding why some school boards end up in court while others do not for similar school accidents causing similar physical injuries to students. Chapter VI gives the summary, conclusions, implications, guidelines for teachers and school boards which may help prevent accidents causing physical injuries to students, and recommendations for further study.

CHAPTER II

REVIEW OF RELEVANT RESEARCH

Introduction

In order to provide some understanding as to how the present investigation relates to a broader body of related research in the field, this chapter summarizes the research carried out in Canada and the United States based on the tort of negligence in relation to school accidents causing physical injuries to students. Consequently, this chapter is divided into two major sections; namely, related Canadian research and related American research. The Canadian research is presented in chronological order, whereas the American research, being much more extensive, is categorized under various subheadings with the hope that this method will be an aid to understanding.

Related Canadian Research

A search of the literature has revealed only five Canadian theses completed to date which are either directly or indirectly related to this present study. The first of these was Lamb's study. Although more than a quarter of a century old, having been completed in 1957, it is directly related to this study. The other study that is directly related to this one, although much narrower in scope (since it deals only with negligence cases involving school-related sports), was recently carried out by

Gray in 1983. The remaining three studies (Bargen, 1961; Enns, 1963; and McCurdy, 1964) are indirectly related. In order to show how these three studies by Bargen, Enns, and McCurdy are indirectly related to this study, pie charts [similar to the one used by Harrison (1980:5)] will be used along with the summaries that follow to provide pictorial illustrations.

The earliest of the five studies, Lamb's (1957), examined pertinent cases and statutes regarding tort liability of school boards and teachers for school accidents causing physical injury to students. In his analysis of the court cases, Lamb found that the legal status of school boards and teachers in this regard was determined by what he referred to as "principles" of law. The following are the thirteen legal "principles" that he found (pp. 61-68):

> 1. Boards and teachers in Canada have no general immunity in common law from tort action.
>
> 2. School boards cannot escape the responsibility for duties laid upon them by statute, regulation, or common law by delegating those duties to others, even if they employ those who would normally be considered sub-contractors.
>
> 3. School boards are responsible for the tortious acts of their servants if the latter act within the scope of their authority.
>
> 4. Negligence is the result of the failure to perform, or the unsatisfactory performance of, a legal duty imposed by statute or common law on boards, their agents or teachers.
>
> 5. Contributory negligence on the part of a plaintiff is no longer grounds for dismissal of a suit, but results only in the sharing of the damages between the plaintiff and the defendant.
>
> 6. Common law insists that boards and teachers owe their pupils the same degree of care that a "careful father" would give his children.

7. School boards and teachers are not responsible for accidents that happen outside of school hours or beyond the school grounds except where the following can be established:

   (a) that the accident occurred during a school trip or outing or as the result of the operation of a school traffic patrol (where no provincial statutes protect the boards and teachers).

   (b) that the board failed to provide a "safe place" suitable for the category of user into which the plaintiff fell.

   (c) that the board and teacher failed in their common law duty to act as a "careful father" or failed to live up to a standard which others might "reasonably" expect of them.

8. Statute law requires that school boards keep buildings and equipment in good repair.

9. Common law also requires that boards and teachers as occupiers of property take certain precautions for the safety of the persons who use that property.

10. School board members are not individually liable for damages sought against them for alleged negligent acts, or failure to act, unless a statute specifically provides for such individual liability or it can be shown that they acted in bad faith.

11. Teachers are liable for their own negligence in school accidents, but they have some protection through the general practice of suing the board, as master in a master and servant relationship.

12. The giving of first aid to accident victims by other than competent persons is to be done very cautiously.

13. Signed permission slips for school trips and unusual activities, although a good practice, do not eliminate the possibility of legal action arising out of accidents suffered during or as a result of these trips or activities.

Of the three indirectly related studies, Bargen's (1961) was a very comprehensive legal study undertaken to examine court cases and statutes regarding the Canadian public school pupil. In his study, he summarized litigation dealing with the following legal aspects of pupil education: compulsory attendance laws, the right to an education, admission and attendance, religious instruction, language instruction, patriotic exercises, suspension and explusion, corporal punishment, and the tort of negligence. Bargen's in depth analysis resulted in the following general conclusions (pp. iii & iv):

> 1. Both statutory and common law are essential in defining the legal status of the pupil. Statutory law is predominant in defining the right of a child to an education, admission and attendance at school, and the curricula. Common law assumes major importance in defining pupil control in school, and the degree of care owed by school personnel to the pupil.
>
> 2. Provincial governments have no "natural" responsibility for the education of children, but Courts hold that legislatures, by passing educational laws, create for themselves an inescapable "statutory" responsibility in this respect.
>
> 3. Separate schools in Canada are not independent entities but are an integral part of the public school system within which they operate; they are public schools of a special kind. Pupil rights and responsibilities in such schools are the same as in the public schools.
>
> 4. Private schools have no statutory existence but are "tolerated" by provincial governments. If these schools desire accreditation they must meet the standards required of public schools. Private school personnel are legally responsible to the same degree as public school personnel for the education and care of their children.
>
> 5. In regard to a child's rights and responsibilities society has erected not only a framework of legal mandates and restrictions, but also a legal philosophy which imbues this framework with life and purpose. Only with the help of this legal philosophy can the social end of education be understood and achieved.
>
> 6. The Courts will uphold the rights of a child, but will also demand of him the fulfilment of those responsibilities which he owes to his school and its personnel.

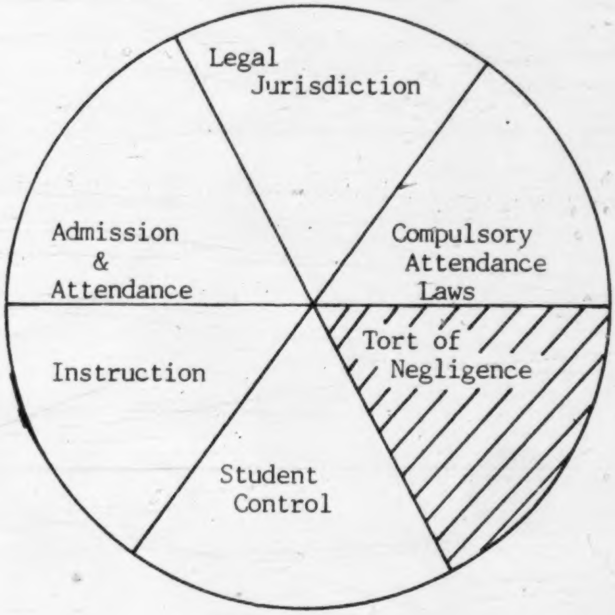

Figure 1 -- Bargen's Areas of Study

In addition to these general conclusions, Bargen also stated (pp. 155-156) that with regard to the tort of negligence, ten principles of law appeared to govern school authorities. Eight of these principles were identical to the first eight of Lamb's thirteen principles outlined above. The other two principles listed by Bargen are as follows:

1. School boards and teachers are not liable for non-feasance of a discretionary duty, but are liable for misfeasance once the duty is undertaken but not properly carried out.
2. The degree of care owed to school children by school authorities is of a higher degree than that required of an invitor towards an invitee. The child is, in fact, a **"compulsee."**

In a similar vein, Enns (1963) carried out a legal study whereby he tried to define the legal status of Canadian school boards by examining case law and relevant statutes. However, he devoted only two pages of his thesis to school board liability regarding school accidents causing physical injuries to students, and that brief section was concerned only with accidents in pupil conveyance, from which he drew the conclusion that "the risk of injury to pupils being conveyed places the further duty to exercise adequate care upon the board" (p. iv). Clearly, then, Enns' study cannot be employed as a source of information regarding school board liability for student injuries.

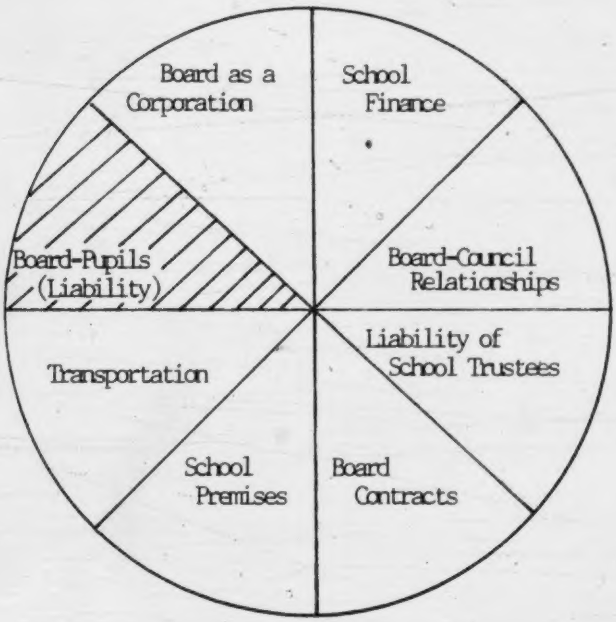

Figure 2 -- Enns' Areas of Study

McCurdy's study (1964), like the two studies previously mentioned, was carried out at the University of Alberta. In it he defines the legal status of the Canadian school teacher and includes a very short section (10 pages) on teacher liability for school accidents resulting in physical injuries to students. Approximately half of this short section is devoted to the theory of the tort of negligence, and the remaining half consists of a summary of Lamb's findings. Again, like the study carried out by Enns, McCurdy's study is only peripherally relevant to this present investigation and adds very little in the area of school board/teacher liability for school accidents causing physical injuries to students.

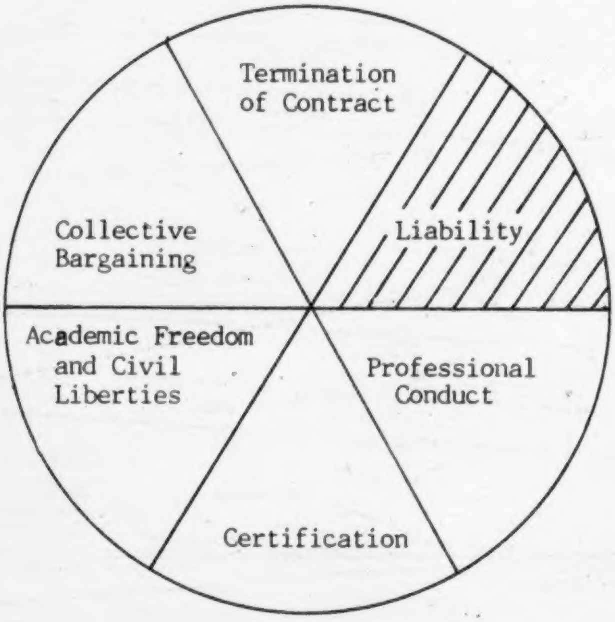

Figure 3 -- McCurdy's Areas of Study

The most recent study in this area is Gray's (1983). It is directly related to this investigation, but in a limited way. Although it was carried out at the University of Oregon, it was a Canadian study, consisting of a compilation of reported cases of negligence in Canada up to December of 1982 with regard to school-related sports and games. The main issue of his study was to determine the standard of care owed to students by physical education teachers. His findings showed that the Canadian courts held that the standard of care expected is the care expected of a reasonable and careful parent or a reasonable and careful parent of a large family. From the decisions made in the various court cases, Gray made recommendations with regard to the standard of care expected of physical education teachers in school sports situations.

In retrospect, then, as the summary of Canadian research presented in this section underscores, a definite need appeared to exist for a new study to cover the whole gamut of tort liability regarding school accidents which have resulted in physical injuries to Canadian students. That was the intention of this present study.

Related American Research

More American studies were found than Canadian ones with regard to the tort of negligence in public schools. Because of this large number, these American studies can easily be divided into the following meaningful categories: three of the twelve studies fall into the category of general tort liability in public schools, two studies deal with tort liability regarding physical education programs, two other studies relate to tort liability regarding science/shop teachers, and two studies deal with the immunity doctrine (a common law principle of school law based upon the premise that governmental agencies are not liable for their torts), whereas the three most recent studies are concerned with a new kind of tort known as "educational malpractice." This refers to the belief that schools should be held liable for intellectual and psychological injury done to the student as a result of negligent teaching. According to Connors (1981:149), "malpractice is a very new area of educational tort law" and it "may replace the physical injury suit as the biggest threat to education from the area of tort law."

Categorized summaries of these American studies which relate to the tort of negligence regarding physical injuries to students follow.

Tort Liability in Public Schools (general)

Wood (1962) carried out a case study in which he interviewed school administrative staff members with regard to three fictitious situations based on certain aspects of the liability of school districts and school personnel in the state of Michigan. The purpose of his study was twofold: (1) to identify and examine problems of school operation relating to liability of school districts and/or school personnel; and (2) to determine the effect present liability laws had on school policies, practices, and programs in Michigan school districts.

The major findings of Wood's study were:

1. Michigan public school administrators took an apprehensive view toward possible and potential school liability hazards but were confused as to the nature and extent of liability hazards under existing law.

2. General liability insurance was purchased by approximately three-fourths of Michigan school districts. School officials appeared to lean heavily on the advice of insurance agents and the expectation that insurance afforded sufficient protection.
3. Programs and services in Michigan public schools appeared to be reinforced along conventional lines by possible liability hazards.
4. Prescribed standards of care, implied under present liability laws, had apparently not been translated into plainly set forth specifics relating to the operation of public school educational programs.
5. Insurance appeared to be overrated by school officials as a means of protecting the injured and as a device for protecting teachers and other employees from possible personal liability.

Marshall, in a doctoral dissertation completed in 1963, analyzed court decisions in order to determine the liability of the public school teacher in the state of Pennsylvania. His study dealt with negligent acts or omissions that took place in the classroom, in the school building, on school grounds, and, in some cases, on the way home from school.

The findings and conclusions of Marshall's study (1963:231) include the following common law principles as defined by the courts:

1. The teacher's duty and responsibility for the supervision of his pupils extends from the time the child leaves the shelter of his home until he returns again. This authority may be extended to include acts which affect the morale and efficiency of the school even though the child has reached his home.
2. The teacher must be aware of the dangers of acting beyond the scope of his delegated authority. His "in loco parentis" status does not extend beyond matters of conduct and discipline.
3. The teacher increases the risk of legal action should an injury occur when he assigns pupils to tasks that are not directly associated with the course of study.

4. While the board is primarily responsible for the safety of equipment, the teacher must see that the equipment is used in a safe manner and take all steps necessary to prevent injury to the students.
5. The teacher must exert reasonable care to avoid injury to the students. He is expected to foresee the danger of injury as a normal person would.
6. If dangerous activities are to be performed by the students, the teacher is expected to increase the amount of care used to avoid injury.
7. The teacher must report unsafe conditions to the proper authorities. Failure to do so constitutes an act of omission.

Dwyer (1966) analyzed court cases which he retrieved from the National Reporter System for the period 1946 - 1965. The aim of the study was to group court cases regarding teacher liability for student injuries according to time, number, region, and holding. In addition, an attempt was made to determine for what reasons the court held a teacher to be negligent or free from negligence, what the courts interpreted as constituting "foreseeability" (or "what a reasonable prudent person could have foreseen"), and what trends were evident in the "save harmless" laws and "save harmless" legislation. Surprisingly, only two findings were given in the abstract for Dwyer's study: (1) of the sixty-five cases reported, forty-three were held for the defendant and twenty-two were held for the plaintiff; and (2) twenty-five of the cases were tried in seven states for the period 1946 - 1955, whereas forty were tried in thirteen states during 1956 - 1965.

Tort Liability and the Immunity Doctrine

The immunity doctrine, which considers the school district as a governmental entity, prevails in many of the American states today. This common law doctrine was conceived during the age of "the divine right of kings," a time when it was believed that "the king could do no wrong." The state has inherited this immunity by assuming the sovereign powers of the king and has extended this immunity to the school district, which is viewed as an agent of the state carrying out a governmental function; and, therefore, it is entitled to share in the sovereignty of the state. Lemley (1964), however, in his study of tort liability in public schools, found that there was a trend toward the abrogation of the common law doctrine of governmental immunity by the state supreme courts. He noted, too, that four states had abrogated the rule since 1949 but that the immunity doctrine still existed to some degree in forty-three states.

The most recent American study based on the immunity doctrine was done by Torres in 1973. The results of his study showed that there was a gradual movement towards abrogation of school district immunity. In fact, the following paragraph taken from his study succinctly depicts such a trend:

> Three states, California, Illinois, and New York, have been the leaders in the complete abrogation of immunity. Other states have developed specialized laws for granting recovery in limited areas. Kentucky, Tennessee, and Oregon allow recovery to the amount of liability insurance carried. School districts in the State of Washington were liable except for injuries occurring in certain specified locations. A few states attempted the division of the school's functions into governmental or proprietary categories. (p. 206)

Tort Liability and Physical Education

Soich (1964) examined court decisions from 1958-1964 in order to analyze tort liability of school districts and their employees for injuries sustained in conducting physical education programs in the public schools of the United States. On the basis of a careful examination of 139 tort liability cases, Soich drew the following conclusions:

1. In the absence of negligence, school districts, and/or their officers, agents, and employees will not be held liable for injuries sustained by pupils in the playing of games not inherently dangerous; they will not be held to be the insurers of the safety of children at play; and, they will not be held liable for an injury created by the willful misconduct of others.
2. The courts have been divided in their opinions on tort liability created by injuries arising from improper, inadequate, or lack of supervision, from the intervention of a third party, from the maintenance of a dangerous condition of grounds or buildings, from a breach of duty to an invitee, and from the maintenance of a nuisance.
3. The courts generally uphold the theory of governmental tort immunity for school districts and school boards but do not extend the same protection to their agents or employees.

In a similar study, albeit much more recent, Stremlau (1976) analyzed court cases regarding the law of negligence and liability in relation to instruction, supervision, and care of the injured in physical education programs, especially at the level of higher education. His findings were as follows:

1. Physical education teachers at all educational levels have a legal duty to provide for their students reasonable care.
2. Where danger is reasonably foreseeable appropriate action must be initiated by college instructors to prevent injury.
3. Physical education personnel must take immediate and reasonable action to care for a seriously ill or injured college student.
4. The number of negligence claims being filed against physical education teachers, particularly at the public school level of education, is thought to be increasing.
5. The standard of care which is currently being demanded of physical education teachers is reasonable.

6. The fundamental principles of tort law are applicable at all levels of education. However, the degree of care owed to students varies depending upon their maturity. Students of college age who are approaching full maturity, and who in most instances reached the age of majority, are generally believed to be capable of making reasonable decisions for their own welfare. Therefore, less general supervision is required of instructors in instutions of higher learning than within the various levels of the public school system.

Tort Liability and Shop/Science Teachers

Kigin (1959) carried out a general study based on tort liability regarding shop teachers. It's aim was to determine to what extent shop teachers were held liable in court actions resulting from student accidents in the classroom. In addition, it searched for possible methods that could be used by shop teachers to avoid accidents and litigation. Unlike other legal studies of this nature, which draw conclusions from analyzing relevant court cases only, Kigin drew eclectic conclusions based on the following sources: information forms sent to State Supervisors of Trade and Industrial Education and to Executive Secretaries of State Teachers Associations in the forty-eight states and the District of Columbia; law books and reviews; books on school law; professional education journals; newspapers; state statutes; and the National Reporter System.

Kigin's general study reaped the following general conclusions: (1) school districts in common law states are immune to liability under the principles of common law immunity; (2) only injuries caused by the negligent or careless action of the teacher can result in liability, and the burden of proof is on the plaintiff; (3) the teacher's authority over the pupil is contained in the legal phrase "in loco parentis"; (4) the best protection a shop teacher has from liability lies in the use of extreme care in all cases in which it is possible for a pupil injury to occur; and, (5) the use of guards on machines, proper instructions, and proper supervision were found to be important in reducing the possibility of teacher liability.

A study regarding the liability of science teachers for accidents resulting from science-related activities was done by Barrett in 1977. On examining the relevant court cases, Barrett drew the following conclusions (pp. 83-84):

> 1. Science teachers may be held liable if they fail to explain basic procedures or fail to warn students of inherent risks involved in certain activities.
> 2. Science teachers who require students to do acts which might jeopardize their safety, or assign tasks to pupils not directly associated with the regular course of study, may be liable.
> 3. Science teachers may be liable even if an independent third act results in direct injury to the plaintiff if it can be shown that in the ordinary and natural course of events, they should have known the intervening act was likely to happen.
> 4. Science teachers may be liable if it can be shown that injury to the plaintiff would not have occurred in the absence of the teachers' negligence.
> 5. Science teachers may be liable for negligence in failing to exercise reasonable care in providing and labeling of dangerous materials.
> 6. Science teachers may be liable if they improperly instruct and supervise the selection, compounding, and handling of ingredients used in certain experiments.
> 7. Science teachers may be liable if they limit their instructions regarding dangerous experiments to the handing out of textbooks containing directions **only**.
> 8. Laboratory instructors may be liable if they leave the laboratory while potentially dangerous activities are being performed or likely to be performed while they are out.

9. Science teachers may be liable if they allow students to perform activities in the absence of safe and proper equipment.
10. Science teachers may be liable if they fail to insist that students use the proper safeguards, as in the wearing of safety goggles when warranted.

In addition, Barrett's data showed several trends: namely, (1) school-related litigation has been increasing since the mid 1950's; (2) courts appear to be granting larger awards for damages; (3) negligence in instruction and supervision has been the most often cited grounds for suit; (4) the most successfully used defense employed by school districts has been contributory negligence; (5) the doctrine of reasonable care has been the most often cited reason given in finding for the plaintiff; and, (6) the abrogation of the sovereign immunity doctrine in some states has increased school-related tort litigation.

Tort Liability and Educational Malpractice

In 1985, Bollinger studied the trends in law regarding educational malpractice for the period 1976-1984. She found that the courts are reluctant to impose educational malpractice as a liability on schools because (1) recognition of educational malpractice would open the door to a flood of countless, and often frivolous student claims, and would overburden the courts and the already beleaguered school system; (2) litigation of such claims would inevitably lead to inappropriate judicial interference in educational policy making and in the allocation of scarce resources; (3) there are already available administrative procedures for the satisfaction of complaints of incomplete instruction; and, (4) proof and damages would actually be too difficult to assess.

A similar study was carried out by Ogbugbulu in 1984. He analyzed the following types of educational malpractice suits: (1) cases that dealt with high school graduates judged to be functionally illiterate; (2) cases that dealt with monetary awards as a remedy for educational malpractice; (3) cases that dealt with students' and/or parents' allegations of teachers' incompetence; (4) cases that dealt with wrong diagnosis and misplacement of educationally handicapped students; and, (5) cases that asked for a change of school program as a result of educational malpractice suits.

The results of Ogbugbulu's study revealed that: (1) whenever school policies are haphazardly formulated, school administrators and teachers run a risk of being held liable for educational malpractice; (2) courts have refused to hold schools, administrators, and teachers responsible for students' nonlearning because of the legal problems involved in demonstrating a functional relationship between students' learning and teachers' instruction; and, (3) courts have refused the use of court rooms as a forum for evaluation of academic deficiencies.

In a slightly different vein, Collis (1984) completed a broad study of educational malpractice from a legal, educational and philosophical point of view. His main conclusion was that "thus far a cause of action for 'pure' educational malpractice has not been sustained"; however, he believes that, "given the proper facts, a properly drafted complaint for educational malpractice, brought in a proper court and argued in a proper manner, may very well be sustained."

Summary

This chapter presented a review of Canadian and American research which was relevant to the study under investigation. The literature search revealed only five Canadian studies which were based on the tort of negligence in relation to school accidents causing physical injuries to students. The related American research, however, was found to be much more extensive and varied than the related Canadian research. This is evident from the fact that, unlike the related Canadian research, the related American research was so varied that it was able to be categorized into various subsections, which included tort liability in public schools (general), tort liability and the immunity doctrine, tort liability and physical education, tort liability and shop/science teachers, and tort liability and educational malpractice.

CHAPTER III

TORT LIABILITY IN RELATION TO TEACHER AND SCHOOL BOARD

Introduction

The previous chapter provided a panoramic view of the Canadian and American research regarding teacher and school board liability for student injuries. In contrast, this chapter is more technical and narrower in scope in that it focuses on tort liability, in particular the tort of negligence, thus providing a legal framework for the remainder of the study. More specifically, this chapter is divided into four sections; namely, the theory of tort liability, the theory of negligence, legal considerations in teacher-student relationships, and legal considerations in school board-student relationships.

The Theory of Tort Liability

Most legal writers express the view that the word "tort" cannot easily be defined. Lexicologically, however, the word "tort" originated from the Medieval Latin word **tortum** which meant twisted or distorted. Commonly expressed, a tort is not a crime but a civil wrong perpetrated upon another, independent of contract. Prosser gives a more detailed definition. He states (1971:2) that

> A tort is a civil wrong, other than a breach of contract, for which the courts will provide a remedy in the form of an action for damages ... it is not a crime, it is not a breach of contract, it is not necessarily concerned with property rights or problems of government, but it is the occupant of a large residuary field remaining if these are taken out of the law.

In addition, Prosser states (pp. 26-27) that there are only three grounds on which to impose tort liability. These grounds are:

1. Intent of the defendant to interfere with the plaintiff's interests.
2. Negligence
3. Strict liability, "without fault," where the defendant is held liable in the absence of any intent which the law finds wrongful, or any negligence, very often for reasons of policy.

It might be re-iterated at this point that, as mentioned in the section dealing with delimitations in chapter I, this study is not concerned with intentional torts or strict liability; rather, it is confined to only one of the above -- that of the tort of negligence.

The Tort of Negligence

Prior to 1825 negligence was seldom viewed as a separate tort, although some legal historians believe that its recognition as a separate and independent basis of tort liability was sparked by the Industrial Revolution, a period which witnessed a myriad of industrial accidents. Today, however, the tort of negligence is solidly entrenched in our common law system.

There are many definitions for the term negligence, most of them similar. The most common interpretation, however, is that it refers to any conduct that does not measure up to the standards established by law for the protection of others. The great legal scholar and writer, Sir John Salmond, defines negligence as follows (cited in Stallybrass, 1945:428):

> Negligence is the omission to do something which a reasonable man guided upon those considerations which

> ordinarily regulate the conduct of human affairs would do, or the doing of something which a prudent and reasonable man would not do.

According to Prosser (1971:143), in order to have a valid cause of action for a negligence suit certain elements must exist; such as

1. A legal duty to conform to a standard of conduct for the protection of others against unreasonable risks.
2. A failure to conform to the standard.
3. A reasonably close causal connection between the conduct and the resulting injury
4. Actual loss or damage resulting to the interests of another.

This quadruple division of the elements of negligence has been criticized by Linden (1982:85) because of the difficulties which he states may sometimes arise; for instance, Linden mentions that the first and third elements are sometimes blended together due to the courts's handling the proximate cause question in terms of duty or remoteness. In addition, he notes that the conduct of the plaintiff as an element to be assessed in the process is not taken into consideration.

Notwithstanding Linden's valid criticisms, Prosser's four elements -- which may be referred to simply as duty, standard of care, proximate cause, and injury -- will now be discussed in light of the school environment.

The courts have held that the school owes the student a duty of supervision. This duty of supervision is most often performed by the teacher, sometimes by the principal, and, occasionally, by the school board. Varying degrees of supervision are expected of the teacher depending on the risk or hazard of the particular activity; for example, the industrial arts teacher, the physical education teacher, and the chemistry teacher each owes the student a much higher degree of supervision than the regular classroom teacher does, for the simple reason that the activities performed by the student in the shop, in the gym, or in the laboratory expose the student to a higher risk of injury than the instructional activities that are performed in the regular classroom. Likewise, early childhood teachers are expected to maintain a higher level of supervision, or standard of care, due to the young ages of these students. In a similar manner, teachers of mentally handicapped students are expected to exercise a greater standard of care than the regular classroom teacher of 'normal' students. In general, the standard of care applied by the courts is the "reasonable man" doctrine, which is discussed in detail later in this chapter under the section entitled "Legal Considerations in Teacher-Student Relationships."

With regard to the element of "proximate cause," it must be shown that there was an unbroken causal chain between the act or omission and the injury suffered by the plaintiff. Connors (1981:8) refers to proximate cause as "a complex legal principle" since the teacher's conduct does not have to be the **direct** nor the **indirect** cause of the injury but must be "the proximate -- closely related in time, space, or order -- cause of injury." Furthermore, Connors points out that the most common proximate cause in education is lack of supervision. He describes a hypothetical situation in which, while the teacher is absent from duty during recess, two boys are involved in a fight and one becomes seriously injured. From this scenario, Connors draws the conclusion (p. 9) that "many courts in this country will find the teacher's absence from the recess yard to be the proximate cause of the injury, reasoning that the injury might not have happened if there had been adequate and proper supervision."

The last element of negligence, injury, is probably the easiest of the four to verify. However, the plaintiff cannot recover unless it is demonstrated that there was actual loss resulting from the defendant's negligent act. Moreover, if more than one person is held responsible for the plaintiff's injury, then damages are usually apportioned among the tortfeasors (Alexander, 1980).

Defenses against a Negligence Charge

Once it has been determined that there is a valid cause of action for a negligence suit, the next logical step is to examine which defenses may be employed against the negligence charge. A careful survey of the legal literature, carried out by the writer, has shown that the following are common defenses that may be used for denial of recovery:

1. Contributory negligence
2. Assumption of risk
3. Comparative negligence
4. Intervening cause
5. Sovereign immunity
6. Approved general practice
7. 'Pure accident'
8. Time limitation

An explanation of each of these defenses follows:

Contributory Negligence. Contributory negligence occurs when an act or omission on the part of the plaintiff contributes in some degree to the injury. Although there are some exceptions, in the United States such an occurrence would bar the plaintiff from recovery; in Canada, though, contributory negligence is not grounds for dismissal of a suit, but, rather results in the damages being reduced in proportion to the plaintiff's fault (Bargen, 1961). With regard to educational tort liability, Connors (1981:12) points out that the Rule of Seven could be employed whereby pupils between birth and age 7 cannot be considered negligent under the law. Furthermore, he states that "the law will **presume** that pupils aged 8 to 14 are not negligent." However, "this assumption may be rebutted, but the burden is on the educator to prove that the pupil **did** know better than to act in such a way as to produce injury."

The final category of the Rule of Seven pertains to students who range in ages from 15 to 18. In this age bracket the courts have held pupils to be "possibly negligent."

Assumption of Risk. This doctrine means that a plaintiff cannot recover from an injury if he voluntarily exposes himself to a situation that involves a risk of which he is aware. But, the courts will not recognize the assumption of risk doctrine to be a viable defense if the educator has not provided the pupil with the proper instructions or used the best possible equipment in the situation (Connors, 1981:13). Moreover, if it can be shown that the pupil did not fully understand the risk involved in the situation due to his age, lack of information, and experience, then the doctrine is not permitted to stand in court (Barrett, 1977).

According to Prosser (1971:457), the assumption of risk doctrine "is by no means a favored defense, and it is likely to be at least limited and restricted in the future." If it is used as a defense, then the following requirements must be met: (1) the plaintiff has knowledge of facts constituting a dangerous condition, (2) he knows the condition is dangerous, (3) he appreciates the nature or extent of the danger, and (4) he voluntarily exposes himself to the danger.

Comparative Negligence. Whereas in contributory negligence the plaintiff is barred from any kind of recovery (in the U. S., albeit not in Canada), the concept of comparative negligence recognizes that both the defendant and the plaintiff are negligent and that both are required to pay damages. Damages are categorized on an "ordinary," "slight," "gross" or " wilful and wanton" basis. These terms are explained by Prosser (cited in Bargen, 1961:138) as follows:

> **Ordinary negligence.** Ordinary negligence is simply the failure to use ordinary care in a situation. The actor may not depart from the usual formula of doing what is required of the reasonable man. Ordinary negligence will give the injured party the right to be put in the same position that he was in before his injury; or, if this is not possible it will give him the right to be compensated accordingly.
>
> **Slight negligence.** Slight negligence is failure to use great care, and results in liability only where such care is required. It is not the same as slight want of ordinary care; but, rather, the want of that degree of care which is necessary under the circumstances.
>
> **Gross negligence.** Gross negligence is failure to use slight care, or the care that even a careless person would use. It is a drastic departure from a proper standard of conduct or care.
>
> **Wilful and wanton negligence.** Wilful and wanton negligence is negligence that borders on intent. It consists of intentional conduct of an unreasonable character in disregard of a known risk involving great possibility of harm.

In a school situation, if more than one person's negligence is found to be the cause of the student's injury, then the court will partition the damages among the negligent parties; for example, if the teacher is judged to be 50% negligent, the principal 30% negligent, and the school board 20% negligent, then each of these parties will have to pay these respective percentages of the total damages awarded to the student (Connors, 1981).

Intervening Cause. This results from the independent act of a third person intervening between the original wrongful act or omission of the defendant and the resultant injury. Moreover, in order for the defendant to be exonerated, it must be shown that the intervening cause could not have been reasonably anticipated by him, and that it did not result from the original risk created by the defendant. Furthermore, it must be shown that the intervening cause had the effect of disrupting the natural sequence of events to the point where the injury would not otherwise have happened.

Sovereign Immunity. This doctrine considers the school district to be a governmental entity; therefore, it cannot be sued. Although this doctrine used to be quite prevalent in the American states, over the years there has been a movement towards abrogation. Now it exists in only 8 to 10 states (Connors, 1981:13). In Canada, however, this doctrine has very little impact since, according to Lamb (1957:38), "school boards are not considered to be emanations of the crown and therefore have no special immunity for their tortious acts."

'Approved General Practice.' This is a defense commonly used by teachers against negligence charges by students who have sustained physical injuries while under the teacher's supervision. In such a case the defendant teacher tries to show that his actions conformed to a practice that is commonly followed in similar situations in other schools. Nevertheless, the plea of 'approved general practice' cannot always be relied upon as an effective defense; for instance, in the case of **James et al. v. River East School Division No. 9**, a grade 12 student was injured when an explosion occurred in a chemistry laboratory. This occurred in spite of the fact that the teacher had given the normal written and verbal precautions, thus conforming to the standard practice in his school (as well as in other schools). But, the court held that "the test is not what **is** ordinarily done but rather what **ought** ordinarily to be done." In commenting on this case, Rogers (1981:29) concludes that "it would seem it is not enough to adhere to common practice in other schools. Rather, one must assess the practice to see whether it is reasonable in all of the circumstances and the fact that a practice is followed by everyone else will not necessarily provide a successful defense."

'Pure Accident'. Since the word accident, according to **The Heritage Illustrated Dictionary** (1973 edition), "refers to an event which occurs without fault, carelessness, or omission on the part of the individual involved," it follows, then, that if the defendant teacher or defendant school board is able to show that nothing could be done to prevent the accident, then a charge of negligence will usually be defeated using the plea of 'pure accident'.

Time Limitation. In general, teachers and school boards in Canada are given a measure of protection against common law action for negligence under the **Public Authorities Protection Act.** This protection results from a time limit clause after which no action may be brought. For instance, in Newfoundland the action must be commenced within six months after the date of the negligent act, or else the action taken by the plaintiff will be barred. More precisely, section 19 of the **Justices and Other Public Authorities Protection Act**, R.S.N. 1970, c. 189, reads as follows:

> 19. An action shall not be brought against a justice or any other person for an act done in discharge or intended discharge of any statutory or other public duty or authority, or in respect of any alleged neglect or default in the discharge of any such duty or authority until
>
> (a) a notice in writing of the intended action clearly and explicitly stating the cause of action and the court in which the action is intended to be brought and containing the name and address of the party intending to sue and the name and address of his solicitor, if any, has been delivered to the justice or other person or left for him at his usual place of abode by the person intending to commence the action, or by his solicitor or agent; and until
>
> (b) the expiration of at least thirty clear days from the date of the service of the notice; and unless
>
> (c) the action is commenced within six months next after the act, neglect or default complained of, or in case of continuance of injury or damage, within six months after the ceasing thereof.

Similarly, in the province of Ontario section 11 of the **Public Authorities Protection Act**, R.S.O. 1970, c.374, provides as follows:

> 11. No action, prosecution or other proceeding lies or shall be instituted against any person for an act done in pursuance or execution or intended execution of any statutory or other public duty or authority, or in respect of any alleged neglect

> or default in the execution of any such duty or authority, unless it is commenced within six months next after the act, neglect or default complained of, or, in case of continuance of injury or damage, within six months after the ceasing thereof.

The defense of time limitation and the other defenses previously discussed are further highlighted in the next chapter of this thesis, dealing with the analyses of court cases regarding physical injuries to students.

Legal Considerations in Teacher-Student Relationships

This section will focus on the notion of the 'careful parent' standard, since this standard is applied to most cases of alleged teacher negligence regarding physical injury to students. In addition to examining the origin of the 'careful parent' standard, an attempt will be made to explicate some of the problems inherent in the use of this standard as well as some arguments for an alternative standard as expressed by some writers.

'Careful Parent' Standard

In considering teacher liability for student injuries, the first question that must be addressed is "What is the standard of care owed by teachers to students?" The law requires that the teacher exercise the same care and prudence as a careful parent would in caring for his or her child in the same or similar circumstances.

The 'careful parent' standard has its origin in the classic English case of **Williams v. Eady** (1893). While at school a student was injured when a bottle of phosphorus exploded. In handing down his judgment, which rendered the schoolmaster liable since he did not take the necessary precautions to safeguard the dangerous chemical from student access, Lord Esher stated:

> "...the schoolmaster was bound to take such care of his boys as a careful father would take care of his boys, and there could not be a better definition of the duty of a schoolmaster. Then he was bound to take notice of the ordinary nature of young boys, their tendency to do mischievous acts, and their propensity to meddle with anything that came in their way."

Historically, the 'careful parent' standard has its roots in the doctrine of **in loco parentis** which was described in 1765 in Blackstone's **Commentaries** (cited in Hoyano, 1984:5) as follows:

> [The father] may also delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then **in loco parentis**, and has such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed.

The term **in loco parentis** has been defined as "in place of a parent" and "charged factitiously with a child's rights, duties, and responsibilities." According to Hammes (1982:8), the concept was transferred from Cambridge to America where it was applied to the tutor/student relationship in colonial era colleges; but, it was later applied to the public school system where it " has been widely used as a legal defense against charges of liability by educators."

There are two other components that are used in conjunction with the 'careful parent' standard: foreseeability and the "reasonable man" standard. The former, foreseeability, means that the defendant could or should have seen the potentially dangerous consequences of the action when it was taken (Thurston & Byrne, 1985). According to MacKay (1984:109), "in order for liability to arise it is necessary that the harm caused and the person injured should have been 'reasonably foreseeable'. The test often used by the courts is whether a 'reasonable person' would have foreseen the accident." The latter, the concept of the "reasonable man" standard, is a fictitious creation of the courts. According to A. P. Herbert (cited in Prosser 1971: 150), the 'reasonable man' exhibits the following characteristics:

> He is an ideal, a standard, the embodiment of all those qualities which we demand of the good citizen....He is one who invariably looks where he is going, and is careful to examine the immediate foreground before he executes a leap or bound; who neither stargazes nor is lost in meditation when approaching trap doors or the margin of a dock;...who never mounts a moving omnibus and does not alight from any car while the train is in motion ... and will inform himself of the history and habits of a dog before administering a caress; ... who never drives his ball until those in front of him have definitely vacated the putting-green which is his own objective; who never from one year's end to another makes an excessive demand upon his wife, his neighbours, his servants, his ox, or his ass; ... who never swears, gambles or loses his temper; who uses nothing except in moderation, and even while he flogs his child is meditating only on the golden mean. ... In all the mass of authorities which bears upon this branch of the law there is no single mention of a reasonable woman.

Turner (1955:431) further summarizes the characteristics of this fictitious 'reasonable man':

1. The reasonable man will vary his conduct in keeping with the circumstances.

2. The reasonable man will be made to be identical with the actor in the matter of physical characteristics. The man who is blind, lame or deaf is not required to do the impossible by conforming to physical standards.

3. The reasonable man is accorded no allowance for lack of intelligence short of insanity. For a defendant to do the best he knows is not enough.

4. The reasonable man is considered to be an adult. Children,

therefore, are not required to meet the same standard of conduct as that of the reasonable man.

5. The reasonable man will be accorded special abilities and skills and will be held responsible for them when the circumstances so warrant. In other words, the law will take knowledge of the fact that some people are of superior knowledge, skill, and intelligence.
6. The reasonable man is required to maintain a higher degree of standard conduct when he has had time to reflect on his course of action than when he must act in an emergency.
7. The reasonable man, under many circumstances, will be charged with the duty of anticipating and guarding against the conduct of others. For instance, where children are in the vicinity, greater caution and anticipation are required than if they were adults.

Since foreseeability of hazards is a basic issue in most liability cases, it is incumbent upon a teacher to anticipate the dangers or accidents that might result from potential hazards, thereby taking all necessary precautions to prevent an accident from occurring. In fact, a higher standard of care might be expected of some teachers (chemistry teachers, industrial arts teachers, gym teachers and teachers of the handicapped, etc.) where special knowledge would make them more aware of potential hazards to the student that would not ordinarily be recognized by the typical 'careful parent'. In fact, the following two cases will attest to the validity of the preceding statement.

In the case of **Thornton v. Board of School Trustees School District No. 57 (Prince George) et al.**, a fifteen year old boy sustained severe injuries which rendered him a quadriplegic. During a gymnastics class he was attempting a somersault by jumping from a vaulting horse on to a springboard. But, he overshot the thick landing mats and landed on his head on a 2-inch "add-a-mat" at the far end of the landing pit, thereby sustaining a severe fracture to the neck.

In upholding the ruling of the trial judge that the physical education teacher in this case was negligent, the appeal judge of the British Columbia Court of Appeal, Mr. Justice Carrothers, stated:

> This is not to say that Thornton exclusively assumed the risk of the exercise to the absolution of the school authorities or that the school authorities were relieved of their common law duty to take care of this pupil during this activity in the manner of a reasonable and careful parent, taking into account the judicial modification of the reasonable-and-careful-parent test to allow for the larger-than-family size of the physical education class and the **supraparental expertise commanded of a gymnastics instructor.** (emphasis added)

In a similar vein, a higher standard of care was expected of the industrial arts teacher in the case of **Dziwenka v. the Queen**, considered in the Supreme Court of Canada. The case involved an eighteen-year-old deaf mute who, while trimming some wooden drawers, seriously injured his left hand when operating a power table-saw without a guard. At the time of the accident, the industrial arts instructor was standing 15 to 25 feet away, supervising other students under his care. The teacher, however, was found to be negligent on the basis of the fact that he did not "closely and directly supervise" the particular operation from beginning to end.

The Supreme Court of Canada concurred with the lower courts that in the case of handicapped students the 'careful parent' test should not apply because it is not stringent enough to account for the increased risk of harm when the student is under disability. In fact, in the **Dziwenka** case, Mr. Justice Laskin of the Supreme Court of Canada stated that

> The duty of care owing to a student, especially a handicapped one as in this case, in respect of his personal safety while operating dangerous machinery, is a stricter one than that owed by an employer to an employee working with dangerous machinery

It is evident from the foregoing illustrations that specialist teachers (such as, physical education teachers and industrial arts teachers) are expected to meet a higher standard of care than that embodied in the 'careful parent' standard. This point was stressed by Donald Rogers, a Canadian civil litigation lawyer, in his article dealing with law suits against teachers and schools. In this article Rogers (1981:27) states that "in our educational system the courts have gradually elevated the standard of care demanded of teachers, with the result that it is increasingly difficult to defend against allegations of negligence. In short, the law is getting tougher on teachers."

Problems with the 'Careful Parent' Standard

Even though the 'careful parent' standard has been applied and accepted for almost a century, its application has been questioned by many legal writers especially during the past two decades, which has witnessed, among other things, changing values in education and emphasis on the individual rights of students.

Thomas (1976:5), for instance, points out that "although the 'careful parent' test seems a simple principle at first glance, several problems arise whenever an attempt is made to apply it." One problem is that very rarely would the circumstances surrounding a school accident be identical to those of a family setting. Another problem is that, unlike parents, a teacher is usually responsible for supervising in excess of thirty students at any one time and the nature of this supervision varies with the circumstances. In addition, there are the problems of supervision associated with the elements of **time** (At what point in time does the duty of supervision begin and cease?), **space** (Over what area must the duty be exercised?), and **extent** (What degree of supervision is required?).

Furthermore, Thomas emphasizes the fact that a judge, in order to counteract these problems, will usually adopt a general approach; he will try to determine "what was reasonable in the particular set of circumstances." This is exemplified in the case of **Myers v. Peel County Board of Education** where Mr. Justice McIntre stated

> It is not, however, a standard that can be applied in the same manner and to the same extent in every case. Its application will vary from case to case and will depend upon the number of students being supervised at any given time, the nature of the exercise or activity in progress, the age and the degree of skill and training which the students may have received in connection with such activity, the nature and condition of the equipment in use at the time, the competency and capacity of the students involved, and a host of other matters which may be widely varied but which, in a given case, may affect the application of the prudent parent standard to the conduct of the school authority in the circumstances.

Thomas describes the 'careful parent' standard as an "elastic yardstick." Hoyano (1984), in her well-researched article based on the 'careful parent' standard, likewise refers to this standard as a "rubber ruler." In fact, her criticism becomes more poignant when she draws upon several relevant cases to illustrate her observation that "the dangerous ambiguity of the 'careful parent' standard of care is emphasized by the fact that judicial critics cannot agree on the situations to which it should or should not be applied" (p. 20). By way of illustration, two of the several cases which she deals with follow:

In **Beaumont v. Surrey County Council** Mr. Justice Geoffrey Lane of the English Court of Queen's Bench stated:

> The duty of a headmaster toward his pupils is said to be to take such care of them as a reasonable careful and prudent father would take of his own children. That standard is a helpful one when considering, for example, individual instructions to individual children in a school. It would be very unwise to allow a six-year-old child to carry a kettle of boiling water -- that type of instruction. But that standard when applied to an incident of horseplay in a school of 900 pupils is somewhat unrealistic, if not unhelpful.

Ritchie J. of the Supreme Court of Canada expressed the same view in **McKay v. Board of Govan School Unit No. 29** when he noted that:

> While I am not satisfied that this definition [in **Williams v. Eady**] is of universal application, particularly in cases where a schoolmaster is required to instruct or supervise the activities of a great number of pupils at one time, I am nevertheless of the opinion that a small group ... is one to which Lord Esher's words do apply.

Hoyano also points out that in the **McKay** case Woods J.A. of the Saskatchewan Court of Appeal took a view which was opposite to that of Justice Ritchie. She notes that Justice Woods held the opinion that "the careful parent standard is applicable only where children are engaged in unorganized play or in team sports, under general supervision; where a teacher is giving individual instruction or supervision, the rule in **Williams v. Eady** is wholly inappropriate" (p. 21). From this example, Hoyano draws the conclusion that such a divergence of opinion makes "the prudent parent standard so vague as to lack any substance at all."

In view of the many factors that have to be considered in applying the 'careful parent' test, Wayne MacKay (1984:115), a prominent Canadian writer in the field of school law, stated that "the 'careful parent' standard" should "be abandoned as a doctrine that has outlived its usefulness." Nevertheless, he further stated that "the rule is alive and well in Canada" and also that "there is scarcely a school negligence case that does not refer to **Willaims v. Eady** and adopt the careful parent as the appropriate standard of care."

Arguments for an Alternate Standard

Several Canadian legal writers have suggested that an alternate standard is needed to replace the 'careful parent' standard with regard to teacher liability for student injuries. One of these writers is Laura Hoyano (1984). Not only does she suggest (p. 28) adopting the standard of "a reasonable and competent instructor" but also she provides some cogent reasons for doing so. Her reasons (pp. 30-31) include the fact that adopting a standard of a reasonable and competent teacher would eliminate one of the steps in the two-step process in which the court "is required to place itself in the position of a reasonable teacher who must place **himself** in the position of a reasonable parent." Besides, she argues that the prudent parent standard has been reduced to a sham because of the many "judicial modifications" that have been made to the 'careful parent' standard enunciated in **Williams v. Eady**.

Correspondingly, Rogers (1981:28) points out that the teaching profession is similar to other professions in that "it does possess special skills and expertise not possessed by the public at large." Hence, he concludes that "it seems reasonable to expect of teachers, as of all professionals, a higher degree of competence in their chosen field than would be demanded of the man on the street."

Legal Considerations in School Board-Student Relationships

Understanding why a school board enjoys corporate status requires looking at the nature of a corporation in law. Hence, this section gives a brief overview of the nature of a corporation. Consideration is also given to the concept of occupier's liability, as well as the duty owed by the school board to the student in this regard. And, using case illustrations, an analysis of different situations which could result in school boards being held vicariously liable for the negligent acts of their teachers is provided, along with the school board's liability for student injuries resulting from student transportation.

The School Board as a Corporation

In the eyes of the law a corporation is a **person**; that is, it is viewed as a **legal person.** However, in order to distinguish between the corporate legal person and the human legal person the corporation is sometimes called a legal entity rather than a legal person (Symth & Soberman, 1983). In fact, according to **Black's Law Dictionary** a corporation is

> An artificial person or legal entity created by or under the authority of a state or nation ... ordinarily consisting of an association of numerous individuals, who subsist as a body politic ..., which is regarded in law as having a personality and existence distinct from that of its several members, and which is, by the same authority vested with the capacity of continuous succession, irrespective of changes in the membership, either in perpetuity or for a limited term of years, and of acting as a unit or single individual in matters relating to the common purpose of the association, within the scope of the powers and authorities conferred upon such bodies by law.

Thus, the corporation is regarded, in law, as a distinct entity which is separate from the individuals who comprise it. The corporation is capable of entering into contracts; it can sue and be sued; it can own property; and it can contract debts (Lipsey et al., 1982).

It is generally held that school boards, since they have a legal identity similar to private corporations, may be classified as quasi-corporations (Valente, 1980). According to Enns (1963:36), even though the school board has corporate status, it cannot be considered a municipal corporation. In fact, he points out that the American courts have held that "a school district is a quasi-municipal corporation." In addition, Enns draws a distinction between a municipal corporation and a quasi-municipal corporation in that the former has a dual function (private or proprietary, and governmental), whereas the quasi-municipal corporation has only a governmental function, that of providing educational services.

In a similar vein, Anderson (1983:3) points out that the school board, as a corporation, "can do only those things it is empowered to do by statute"; and, should its members act beyond these powers, "the acts are ultra vires." Furthermore, she notes that a school board trustee may be held personally liable for his or her actions if it can be shown that the trustee acted maliciously, capriciously, in a discriminatory manner, or in bad faith.

Tort Liability and the Corporation

According to **Halsbury's Laws of England** (Simonds ed., Vol. 9, 1954: 87-88), a corporation is liable to be sued for any tort provided that

1. it is a tort in respect of which an action would lie against a private individual;

2. the person by whom the tort is actually committed is acting within the scope of his authority and in the course of employment as agent of the corporation; and,
3. the act complained of is not one which the corporation would not, in any circumstances, be authorized by its constitution to commit.

Thus, an action will lie against a corporation for such torts as trespass, assault, negligence, nuisance, malicious prosecution, and libel. In order to make the corporation liable for such acts "the relation of principal and agent, or master and servant, must be established between the corporation and the person who commits the tort in respect of the tort in question" (p. 88). If damages should result during the proper exercise of statutory functions by the corporation, then it is exonerated from any action at common law.

Nonfeasance and Misfeasance. Even though school corporations are granted discretionary powers by the legislature they are not obligated to use them and there is no liability for not doing so. However, if they do exercise discretionary powers, they must strictly adhere to the terms of the statute and may, in the event of exercising that power imperfectly, be liable for any resultant injuries. Moreover, where a statute imposes a duty to impose a particular power, failure to do so could result in an action for injury by the party for whose benefit the duty was imposed. Furthermore, if there is no absolute duty, but merely a duty to exercise reasonable care and diligence, then in the case of injury, the onus is on the plaintiff to prove negligence or misfeasance in the matter (Simonds, Vol. 30, 1954).

School Board and Occupier's Liability

Occupier's liability refers to that domain of the law which deals with the liability of an owner or occupier of land for injuries sustained by persons while on the land; and, since it is a branch of the law of negligence, consideration must be given to the duty owed by the occupier or owner to the different categories of persons who, from time to time, might enter upon the land. In addition, consideration must be given as to whether or not the occupier meets the standard imposed by the law in a particular case (MacKay, 1984).

The standard imposed on the occupier will vary according to the category to which the visitor belongs. These categories are described by Smith and Soberman (1983:81) in the following order -- **invitee, licensee,** and **trespasser** -- with the occupier owing the highest obligation to the invitee and the least obligation to the trespasser.

An invitee is described by these legal writers as being a person who has the permission of the occupier to enter "the land" on business; in this situation the occupier obtains some material benefit, or at least the probability of a benefit, from the invitee's presence. An example of an invitee would be a customer in a retail store. In such a case, the duty owed by the occupier to the invitee involves his taking steps to prevent injuries from hazards of which he is aware and also those of which, as a reasonable person, he **ought** to be aware. Consequently, an occupier will be liable for an injury caused to an invitee by a hazard of which he had no knowledge, as long as it can be proven that if he had taken reasonable care he would have known about the hazard.

The licensee category includes visitors who are on the property with the tacit or express permission of the occupier but from whom the occupier will not receive any economic benefit. An example would be a friend paying a social visit in which case the duty of the occupier to the licensee is to remove potential hazards of which he has knowledge. However, even though a reasonable person in the place of the occupier ought to have realized that a hazard existed, the occupier, in this case, has no liability for hazards unknown to him.

A trespasser is a person who is on the property without the invitation or permission of the occupier; he is there unlawfully. As a result, the duty owed by an occupier to a trespasser is minimal; however, the occupier must guard against deliberately creating an unsafe condition that would be injurious to the trespasser, such as, setting traps or firing a gun at him.

In general, students are considered as having the status of invitees while they are on school property and engaged in ordinary activities; and, as invitees, the standard of care owed to them is that enunciated by Justice Willes in the classic case of **Indermaur v. Dames**:

> We consider it settled law that [the invitee], using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know; and that, where there is evidence of neglect, the question whether such reasonable care has been taken, by notice, lighting, guarding or otherwise, and whether there was contributory negligence in the sufferer, must be determined by a jury as a matter of fact.

In a more recent Canadian case, **Portelance v. Board of Trustees of of Roman Catholic Separate School for School Section NO. 5**, Justice Schroeder of the Ontario Court of Appeal expressed the following similar view:

> Inasmuch as pupils enter school premises not as mere volunteers or as a matter of grace, but in accordance with statutory right and duty, they enter "on business which concerns the occupier and upon his invitation, expressed or implied." Thus they are in the same position as persons who enter premises as of right, i.e. as invitees.

It is important to note, however, that, as MacKay (1984:147) points out, the courts have decided in several cases that the duty of care owed to students is higher than that owed to a regular invitee. For instance, in the case of **Brost v. Board of Trustees of Eastern Irrigation School Division No. 44 et al.**, the school principal and the school board were held liable for damages sustained by a six-year-old girl who was injured during school recess when she fell off a swing while being "pumped" quite high by another girl during which time, or at any other time, there was no supervision of the children by a teacher. In considering the applicability of the higher standard of care, Justice Ford of the Supreme Court of Alberta, Appellate Division, made the following comment:

> The law that governs the degree of care of school authorities to safeguard pupils against injury must assert itself in the circumstances of any given case, and I think that the standard of care of a school board towards its pupils is of a higher degree than that to an invitee.

Consequently, it is clear from the foregoing that school boards have a duty to their students to take necessary precautions to make the school property as safe as possible and to warn students of any concealed or unusual dangers that may be present. Of course, the duty owed to students by the school board is not always equivalent to that owed to an invitee. These special cases are discussed later in the case analysis section of this study.

School Board and Vicarious Liability

In law, a corporation is viewed as an artificial person which is distinct from its members and not capable of acting **in propria persona**; its acts must be executed only through its agents or servants. As a result, its liability is a vicarious liability for the acts of those servants or agents, who perform any act or neglect to do any act which is authorized or permitted by the corporation and lying within the scope of its agents' employment (Heuston, 1977:428).

The concept of vicarious liability has been defined by Fleming (1983:338) as follows:

> we speak of vicarious liability when the law holds one person responsible for the misconduct of another, although he is himself free from personal blameworthiness or fault.

Hence, vicarious liability, as it applies to the school board, is an indirect liability in which the school board is responsible through no fault of its own for the wrongs committed by its servants (teachers, janitors, etc.), provided that the servants were acting in the course of their employment. As MacKay (1984:134) points out, the doctrine of vicarious liability has its origin in the law of master and servant where the employer was only liable for acts that resulted from the employer's order, but now vicarious liability "has been expanded to all torts committed by an employee while acting in the course of employment and extends well beyond actions that were expressly commanded by the employer." Furthermore, MacKay notes that the present rationale "is clearly the promotion of reasonable loss allocation" whereby, in the case of student injuries, the school board is in a much better financial position than the teacher to compensate the injured student for damages.

Similarly, Lamb (1957:48) points out that in order for a school board to be vicariously liable for negligence acts committed by its principals, teachers, or any other of its servants, the following three facts must be established:

1. that the relationship of master and servant existed;
2. that the action by the servant was within the scope of his employment; and,
3. that there was the absence of the degree of care which would be exercised by a "careful father."

With regard to these three points, he further notes that the second is of greatest importance to the defendant school board, especially since the courts have taken a fairly broad approach in defining the scope of employment; the first point,however, is usually very easy to determine, and the third point "is often intangible."

Notwithstanding the foregoing, if a teacher acts in a manner that exceeds his or her authority and if the act results in a negligence charge, then the school board is automatically exculpated. This is illustrated in the case of **Beauparlant v. Board of Trustees of Separate School Section**

No. 1 of Appleby, whereby the teachers of one school had declared a half holiday for the purpose of transporting a group of students to a school 11 miles away in order to attend a concert being held to celebrate the birthday of a priest. The students were crowded into the dump of a stake-body truck and, while en route, one side of the truck's dump gave way. This resulted in many of the students falling onto the road with one student being seriously injured. In this case the school board was exonerated from the charge because the teachers had exceeded their authority by declaring a half holiday for the trip without seeking or obtaining consent from the school board.

In addition, if it can be shown that no amount of supervision on the part of the teachers could have prevented the accident, then again the school board will be exculpated. The case of **Scoffield et al. v. Public School Board of Section No. 20, North York**, whereby a female student was injured while she was tobogganing on school property, illustrates this point. In this regard, Justice Jeffrey of the Ontario Court of Appeal stated that

> so far as supervision is concerned, there was supervision, and further that no amount of supervision would have prevented this accident ...I therefore conclude that in the circumstances the defendant board is not liable.

Moreover, no claim for damages will lie against a school board if an accident occurs at a time when no statutory duty of supervision is placed on the board. As an illustration, in the case of **Koch et al. v. Stone Farm School District**, whereby a twelve-year-old male student was injured when he jumped from a woodshed which was on the school grounds, the action was dismissed. In handing down his judgment, Taylor J. stated

> In the case of mere non-feasance by a board of trustees constituted under the **School Act** no claim for reparation will lie except at the instance of a person who can show that the statute under which the trustees act imposed upon them a duty towards himself which they negligently failed to perform.

It appears, then, that school boards may be held vicariously liable for the negligent acts of teachers provided that the teachers were acting in the course of their employment. However, if teachers act in a manner that exceeds their authority the school board will not be held liable for their actions. Furthermore, if it can be shown that no amount of supervision could have prevented an injury to a student, or a student sustains an injury when no statutory duty of supervision is placed on the school board, then the action against the school board will not be successful.

School Board and Pupil Transportation

In Canadian school systems, students are transported to and from school either in buses owned by the school board and operated by hired drivers or else by independent contractors hired by the school board. With regard to the former mode of transportation, the bus driver and the school board are clearly in a master and servant relationship and, consequently, the school board can be held vicariously liable for the negligent acts of the bus driver, provided that he is acting in the course of his employment. In the latter case, however, a different relationship exists -- that of an employer and an independent contractor -- and this somewhat alters the liability of the employer. But, what is the liability of the employer for tortious acts of an independent contractor? To answer that question,

Halsbury's Laws of England (Simonds edition, vol. 25) was consulted from which the ideas that follow were retrieved.

Unlike the relationship that exists between master and servant, a contractor is regarded as a person carrying on an independent business and, in general, the employer is not liable for his tortious acts nor for the tortious acts of the contractors's servants. However, if an employer personally interferes with the work of the contractor or the contractor's servants and directs the manner in which the work is to be done, then he is, in fact, placing himself in the position of the master; hence, he becomes liable for any injury sustained by a third person if that injury results from the contractor's actions while he is carrying out the employer's directions. Furthermore, if an employer is bound by a statutory obligation to execute a particular work, he cannot escape liability for injury sustained by a third person if that injury results from the negligent act of an independent contractor who has been engaged to execute that particular work.

In order to establish whether or not a person is truly an independent contractor, one must determine, not only whether the employer retains the power of directing what work shall be done, but also whether he controls the manner in which it is to be done. If such is the case, then the person doing the work cannot be classified as an independent contractor.

In applying the above principles to school boards, with regard to pupil conveyance, it may be said that a school board is not liable (when exercising its discretionary powers) for torts committed by independent contractors who provide pupil transportation. However, if the school board interferes by giving frequent directions to the bus drivers, such as regulating pupil conduct on buses and changing bus routes, then the school board is placing itself in the position of master and, therefore, making itself liable. As a matter of fact, this point is well illustrated in the case of **Baldwin v. Lyons and Erin District High School Board**. Here, the school board, though not under any statutory obligation to provide pupil transportation, hired Lyons,who owned three school buses, to transport students to and from school. Unfortunately, one of the buses was rammed by a train when the bus driver failed to stop at a railway crossing. As a result, the bus driver and several students were killed. In this case the trial court held that, since there was evidence that the principal and school board frequently gave directions to Lyons and his bus drivers, the drivers were, in fact, servants of the school board; thus, the trial court held that the school board was vicariously liable for the negligence of the bus driver killed in the accident. However, on appeal to the Ontario Court of Appeal, that decision was reversed. (For further details,see Ch. IV).

In any event, if the school board is under statutory obligation to provide pupil transportation, then it cannot escape liability even if the duty is assigned to an independent contractor.

Summary

Of the three major sections dealt with in this chapter -- namely, the theory of tort liability and the tort of negligence, legal considerations regarding teacher-student relationships, and legal considerations regarding school board-student relationships -- the first section defined the term "tort" and presented the grounds on which to impose tort liability. Also, it was pointed out that certain elements must be present (such as, duty, standard of care, proximate cause, and injury) in order to have a valid cause of action for a negligence suit. Furthermore, common defenses against a negligence charge were discussed, such as, contributory negligence, comparative negligence, assumption of risk, intervening cause, sovereign immunity, approved general practice, 'pure accident', and time limitation.

Highlighted in the second section was the fact that the doctrine of the 'careful parent' standard has been, and still is, the basic test used by the courts since 1893 to determine whether or not teachers have been negligent while on supervision duty when accidents have occurred resulting in physical injuries to students. Also, the second section focused upon some of the problems inherent in the 'careful parent' doctrine, such as its applicability at the present time with society's emphasis on individual rights along with the onset of changing values in education. Furthermore, it was pointed out that this doctrine is plagued with the problems of supervision associated with the elements of time, place, and extent, in addition to the vagueness of the doctrine itself. Finally, it was shown that for these reasons prominent Canadian legal writers have espoused the idea that the 'careful parent' standard be abandoned and replaced with the standard of "the reasonable and competent instructor."

The final section of this chapter presented a description of the school board as a corporation which receives its powers from statutes and, like other corporations, it may sue or be sued. Also, it was pointed out that with regard to occupier's liability the school board, in general, owes a duty to students equivalent to that owed to an invitee; and, therefore, it must take all necessary precautions to ensure that the school grounds are free from hazards that may result in student injury. In addition, it was noted that the school board, since it is a statutory corporation, can act only through its servants and, therefore, it is subject to vicarious liability for the wrongs committed by its servants, providing they were acting within the scope of their employment when the wrongful act(s) was committed. With regard to student transportation, it was shown that school boards are not liable for torts committed by independent contractors who transport students to and from school if these contractors are hired under the discretionary powers of the board. However, if the school board interferes in such a way as to create a master-servant relationship with the bus driver(s), it will automatically make itself liable. Notwithstanding the foregoing, if the school board is under statutory obligation to provide pupil transportation, then it will be held liable for the torts of its bus drivers whether or not they are independent contractors.

CHAPTER IV

PRESENTATION AND ANALYSIS OF DATA

Introduction

This chapter presents reported court cases of school accidents which resulted in physical injuries to students. The cases are briefed by using the three-step process outlined in the methodology section of chapter I. Basically, the process involves the presentation of the material facts of the case, the issue(s) involved, and the reasoning applied by the court in rendering judgment. For simplicity, this chapter is divided into three major sections; namely, cases regarding accidents **during** organized school activities, cases regarding accidents **outside of** organized school activities, and the analysis of data.

Cases Regarding Accidents **during** Organized School Activities

In this section the cases are presented in chronological order and are categorized under the following five headings:

1. Accidents during physical education classes and extra-curricular sports
2. Accidents in school laboratories and industrial shops
3. Accidents during class excursions
4. Accidents with regard to pupil transportation
5. Accidents in the regular classroom

Accidents during Physical Education Classes and Extra-Curricular Sports

Walton v. Vancouver Board of School Trustees and Thomas, (1924) 2 D.L.R. 387.

Facts of the case. To celebrate the patriotic occasion of Empire Day, just has it had done for the preceding four years, the Vancouver School Board of British Columbia had authorized an interschool field day on May 23, 1924 for all schools under its jurisdiction, with the arrangements for the exercises being made the responsibility of the individual school principals.

One such exercise, arranged by Principal Thomas of the Florence Nightingale School, was a competitive rifle practice. Three rifles were in use at the practice. Bruce Walton, a twelve-year-old student, was given a rifle that the principal had borrowed and inspected. The rifle had been in general use that day and had given previous trouble due to the fact that it did not eject its shells after firing. This fact was well known before the rifle was handed to Walton. Principal Thomas, under whose direction the shooting took place, had to attend to some ice cream booths and other activities at the same time and so he did not observe the event as it proceeded. During practice, the rifle that Walton was using backfired and metal from the defective rifle penetrated his right eye.

Issue(s). Whether or not the injury sustained by the plaintiff resulted from the alleged negligence of Principal Thomas for not properly inspecting the rifle and/or from the school board for improper supervision of the event.

Reasoning applied by the court. With regard to whether Principal Thomas was negligent in not properly inspecting the rifle, the trial court ruled that Thomas was "merely unskilful, not negligent." However, the trial court ruled that the school board was negligent in that it did not properly provide appropriate safeguards, nor did it properly supervise the event. The British Columbia Court of Appeal affirmed the trial court's ruling. The appellate court stated: (pp. 388-391)

- ... the trustees are responsible for the holding of the competition ... they authorized the holding of the school sport; they granted the holiday for that purpose.
- It was negligent in not providing safeguards. The trustees, like any other corporation, might protect themselves in doing a lawful act by appointing persons skilled in the matter in hand to superintend the carrying of it out.
- School boards have a duty to see that school premises are not used in a manner dangerous to children under their jurisdiction.
- I do not say that the trustees were wrong in permitting target practice at the school... I am not called upon to decide that question... it is enough to say that if they do authorize or permit such a practice, the duty to supervise it properly must be held to rest upon them and a breach of that duty will subject them to damages.
- The particular defect in the rifle was an enlarged chamber and defective bolt... all of which was discernible if there had been competent inspection.
- Thomas did not properly guide or direct the shooting as it proceeded ... if he had done he would have become aware of the defective nature of the rifle.
- We condemn the practice of the use of firearms in the public schools of Vancouver without efficient inspection and supervision thereof.

The appeal was dismissed and the court awarded the plaintiff $2000.00 in damages.

Butterworth et al. v. Collegiate Institute Board of Ottawa, [1940] 3 D.L.R. 466.

Facts of the case. Wilfred Butterworth, a fourteen-year-old student in Grade X at Lisgar Collegiate, Ottawa, sustained injury to his elbow during a required physical education class. On January 13, 1939, Butterworth was exercising on a vaulting horse, having had only one previous lesson on the horse from his instructor. At the time of the accident, the physical education instructor was preoccupied with other duties and two senior boys were placed in charge of supervising the exercises. Butterworth sustained a broken elbow causing anchylosis of the elbow joint, which is a permanent condition.

Issue(s). Whether or not the injury sustained by the plaintiff was the result of alleged negligence on the part of the school board, which negligence consisted in: (p. 466)

1. Failing to have a competent instructor in attendance at the time of the accident.
2. Permitting the use of gymnastic apparatus while no competent instructor was present.
3. Failing to warn the plaintiff of the dangers of using gymnastic apparatus in the absence of the gymnastic instructor.
4. Placing the plaintiff in a class of boys more experienced in gymnastic exercise than him, without warning him that it would be dangerous to follow their example.
5. Placing a class of boys in a gymnasium with instructions to "keep busy," without supplying adequate supervision and without warning them of the dangers attached to the use of gymnastic apparatus.
6. Supplying for the use of the plaintiff mats for gymnastic exercises giving the appearance of safety, but which were so thin that, in fact, they afforded little real protection in the event of a fall.

Reasoning applied by the court. In dismissing the action against the school board, the trial Judge stated that: (p. 471-473)

- From the evidence taken as a whole, it is conclusively established that the cause of the accident is not known.
- When negligence is alleged as the cause of an injury, it must be proved that, had the negligence not occurred, the injury would not have been sustained.
- I am of the opinion that if there was negligence as set out in the statement of claim, and I am of the opinion there

was some negligence, nevertheless this was negligence **sine qua non** [that without which the thing cannot be] and not negligence **causa causans** [the immediate cause].

- I am further of the opinion that the plaintiff was both **sciens** [knowing] and **volens** [willing].

- The plaintiff was conscious of the fact that previously he had been clumsy, and also conscious of the fact that on previous occasions boys had been helping, yet on the occasion of the accident, knowing he had been clumsy, knowing the horse, and knowing that there were no boys posted, he attempted the exercise.

- I think that there was a clear perception of the existence of the danger and also a clear comprehension of the risk involved.

- I am of the opinion that boys of 14 years of age are capable of and indeed should be held to exercise reasonable intelligence and care for their own safety.

Murray v. Board of Education of the City of Belleville, [1943] 1 D.L.R. 494.

Facts of the case. On June 4, 1941, a twelve-year-old student in Grade VIII at the Queen Victoria Public School in Belleville, Ontario, sustained injuries to his wrist while participating in gymnastic exercises. On the occasion of the accident, Murray and his fellow students were pyramid building during school hours and under the supervision of the teacher, Mr. Edgar Bateman. As instructed by their teacher, the students tumbled to the ground on hearing the signal to break-up the pyramid. During the course of break-up, Murray received a broken wrist.

Issue(s). Whether or not the injury sustained by the infant plaintiff resulted from the alleged negligence on the part of the defendant school board in (1) permitting children of tender years to engage in a dangerous exercise unsuited to their strength and ability; (2) permitting an instructor to supervise such exercises who was not properly skilled or qualified; and, (3) omitting to take adequate precautions for the safety of pupils participating in such exercises.

Reasoning applied by the court. In dismissing the action against the defendant school board, the Ontario High Court reasoned as follows: (pp. 495-496)

- The plaintiff has hopelessly failed to show any negligence on the part of the defendant Board, or any of its servants or employees, which caused or contributed to this accident.
- The defendant's instructor did properly and adequately instruct the infant plaintiff as to how to act and conduct himself, both in the action of forming the pyramid and in the breaking of the pyramid.
- The instructor did also take all the necessary care in the conduct and supervision of this demonstration of skill on the part of the participants as to ensure their safety.
- The physical exercises, of which this is a feature, are prescribed in the curriculum. This does not act as a compulsion upon such students as may not be physically or mentally fit to take part in such exercises.
- The infant plaintiff was not in any manner directly or indirectly coerced or forced into taking part in such exercises, but did take part therein of his own free will.
- Such exercise was not of an unreasonable nature. It was one suitable to the age,mental alertness, and physical condition of the infant plaintiff.
- The infant plaintiff was mentally alert and physically fit to take part in such exercise.
- In the case at bar I can find no act of omission or commission on the part of the Board or its servants of which I can say as a matter of law it is negligence, much less actionable negligence.

Pook et al v. Ernesttown Public School Trustees, [1944] 4 D.L.R. 268.

Facts of the case. On April 14,1943, Jack Pook, fourteen years of age, was scuffling while exercising with a classmate during a regular school period of recreation on his school grounds. The school was in the township of Ernesttown in the County of Lennox and Addington, Ontario. During the course of play, Jack Pook fell or was pushed on to the refuse, loose rocks, brick-bats (pieces of brick), etc., which lay on the school grounds. Pook's leg became caught between the stones, and he sustained an injury in his right leg, causing a spiral fracture of the tibia and a fracture of the fibula.

Issue(s) involved. Whether or not the injury sustained by the plaintiff was the result of the alleged negligence of the school board in failing to discharge its statutory duty to keep school premises and playgrounds in repair and free from rubbish or debris.

Reasoning applied by the court. In ruling for the plaintiff, the Ontario High Court reasoned as follows: (p. 272)

- It is clear from the evidence that there was an accumulation of refuse, stones, brick-bats, etc., on the playgrounds.
- Section 89 (of the **Public School Act**) clearly imposes a duty on the Board to refrain from piling rubbish or debris in the school-yard.
- I am of the opinion that there is a direct causal connection between the injury that the infant plaintiff suffered and the negligence of the school board.

Gard v. Board of School Trustees of Duncan, [1946] 2 D.L.R. 441.

Facts of the case. Eleven-year-old Gordon Peter Gard was playing a game of grass hockey with his classmates after school on September 22, 1941, on the school playground in Duncan, British Columbia. The teacher who had been assigned responsibility by the principal for supervising the grass hockey games was at the time attending a staff meeting in the principal's office. Before starting the game, the students had asked her if she could come out and supervise the game. She answered that she could not but that they could go ahead and get the equipment out and get organized, and she would come out after the staff meeting. But the students went ahead and played the game without the direct supervision of a teacher, although the playground was under general supervision. During the course of play, at about 3:30 p.m., Gard sustained a serious eye injury when another boy unintentionally hit him in the eye with a hockey stick in an attempt to play the ball from a position that the rules of the game made illegal.

Issue(s). Whether or not the injury sustained by the plaintiff resulted from the alleged negligence of the teacher, Miss Byrne, for permitting the game to proceed without her supervision.

Reasoning applied by the court. The trial court found the teacher and school board liable on the basis of the fact that supervision of the grass hockey game should have been, but was not, provided. However, that decision was reversed by the British Columbia Court of Appeal for the following reasons: (pp. 456-461)

- It has been laid down that it is the duty of a School Board to take such care as a reasonably careful parent would take of his boy -- and the duty of the teacher is to take reasonable care to protect children under her charge from danger.
- It is not the law and never has been the law, that a schoolmaster must keep boys under supervision during every moment of their school lives. The duty should not be determined from the happening of the extraordinary accident in this case, but from the danger that was reasonably foreseeable before the game.
- ... danger may eventuate in any game, and in that sense injury to one of the players might be foreseen, yet that danger is one of the risks of the game, which every parent knows goes with the game; and I would think the chances of any risk eventuating in a game of grass hockey played by children would be very slight. The possibility of danger emerging was only a mere possibility which would never occur to the mind of a reasonable man; and therefore there was no negligence.
- It seems to me that a "careful father" would not hesitate to allow his boy of 11 years of age to engage in a game of grass hockey without supervision.
- I am of the opinion that Miss Byrne was not negligent in permitting the game to proceed without her supervision. In my opinion, to hold otherwise would be to lay down a standard of conduct which must be pronounced much too exacting.

Hall et al. v. Thompson et al., [1952] O.W.N. 133.

Facts of the case. A nine-year-old boy at Maple Grove School, in Ontario's Trafalgar Township School Area No. 1, sustained injuries while participating in physical training activities.

The principal/teacher, Mr. John Thompson, decided to have a series of athletic contests on successive days as part of the physical training activities. For the first of these days, he organized the boys of his class for wrestling matches, and he planned racing, jumping, and shot-put, etc., for the following days.

For this first contest, Thompson took the boys to the school playgrounds and found an area of ground that was soft, grassy and gravel-free on which to wrestle. He then told the boys that the contestant who was able to get his opponent down in one minute would be declared the winner; but, if no fall occurred, a draw would be the result. Thompson gave no instruction as to holds, etc.

On the day in question, the infant plaintiff, Hall, while taking part in the second wrestling-match, was taken down by his opponent; and, in the course of falling, he suffered a fractured arm at the elbow.

Issue(s). The issue in this case was stated explicitly by the court as follows: "The question then to be determined in this case is, would a careful father allow or direct his boy to take part in the wrestling contest such as was being conducted by the defendant Thompson?" (p. 134) More specifically, the statement of claim was based upon the following grounds with regard to the alleged negligence of defendant Thompson: (p. 134)

1. He failed in his duty to supervise the activities of the infant plaintiff.
2. He specifically directed said infant to undertake an activity which said defendant knew or should have known was dangerous and likely to result in casualty.

3. He directed said infant to embark upon a dangerous activity without any adequate instruction or preparation.

Reasoning applied by the court. In dismissing the action against the defendant Thompson and the co-defendant, the Board of School Trustees, the trial court reasoned as follows: (pp. 134-135)

- The plaintiff has failed to establish a cause of action against the defendants.
- The duty of a schoolmaster toward his pupils has been discussed many times and that duty is ... to take such care of his boys as a careful father would take of his boys, and there could not be a better definition of the duty of a schoolmaster.
- The activities were supervised by the teacher.
- No evidence of any kind was submitted to support the claim that wrestling is inherently dangerous, and no authorities were submitted to me, nor can I find any to support the proposition.
- It may, of course, be true that in all games or contests of skill involving the testing and development of physical strength accidents will happen, but it does not follow, in my opinion, that they should therefore be classified as inherently dangerous.
- The mere possibility of injury resulting from a game is not sufficient to establish breach of duty.

On appeal to the Ontario Court of Appeal, the plaintiff's action against the school board was again dismissed,thereby affirming the lower court's decision.

McKay v. Board of Govan School Unit No. 29, [1968] 60 W.W.R. 513.

Facts of the case. On February 12, 1963,Ian McKay, a sixteen-year-old Grade X student at William Derby High School in Strasbourg, Sask., was practicing gymnastics at his school with about a dozen other boys from Grades X, XI, and XII, in preparation for a display of gymnastics which was to be a feature at an upcoming school variety show. The principal and staff of the school had decided to hold the variety night, and Donald

Molesky, a staff teacher, assumed responsibility for organizing the gymnastics display. The nature of the proposed gymnastics display included tumbling on mats, pyramid-building, and demonstrations on parallel bars.

At about 11:20 a.m. on the day in question, McKay and the other boys had commenced practicing for the gymnastics display under the supervision of Molesky when, suddenly and without warning, McKay fell between the parallel bars and on to the mattress below suffering a fractured dislocation of the C-5 vertebra. As a result of the fall, McKay developed paraplegia with complete sensory and motor losses to the level of the C-5 vertebra.

Issue(s). Whether or not the injury to the plaintiff resulted from the alleged negligence of Molesky in failing in his duty of care to the plaintiff.

Reasoning applied by the court. In judgment for the plaintiff, the trial court stated that the following acts or omissions constituted the failure in duty of care: (p. 516)

1. Lack of competent instruction on parallel bars
2. Insufficient care and attention to spotting
3. Insufficient demonstration on parallel bars
4. Progressive steps on parallel bars rushed
5. Instructor not sufficiently qualified
6. Insufficient safety precautions

Mr. Justice Woods, however, of the Saskatchewan Court of Appeal, ordered a new trial on the basis that the trial judge had misdirected and confused the jury as to what standard of care should be applied in the case. Woods, J.A. stated : (p.522)

> The standard of care as explained to the jury was far from clear. Throughout it the learned trial Judge refers to the standard of care of the careful father with reference to expert knowledge. He attempts to equate in some measure the careful father with the person with special training. These are distinct concepts, and it is difficult to picture just what yardstick the jury might have had in mind following such directions.

On appeal from the Saskatchewan Court of Appeal, the Supreme Court of Canada quashed the Saskatchewan Court of Appeal's direction for a retrial of the case and restored the judgment of the trial court which awarded the plaintiff $183,900.00 in damages.

Piszel v. Board of Education for Etobicoke et al., (1977) 16 O.R. (2d) 22.

Facts of the case. Sixteen-year-old Roy James Piszel, a Grade XI student at the Royal York Collegiate Institute in Ontario, sustained injuries to his elbow during a wrestling exercise in physical education class. Wrestling mats had been placed on the gymnasium's floor, and non-participating students, sitting around the perimeter with their feet pressed against the mats, held them together. On the occasion of the accident, the mats had separated immediately before Piszel fell onto the floor, thereby suffering a fractured dislocation of his left elbow.

Issue(s). Whether or not the injury to the plaintiff resulted from the alleged negligence of the school board in not providing the best safety equipment reasonably possible for the operation of a wrestling class.

Reasoning applied by the court. In finding the school board negligent and requiring it to pay $10,148.96 in damages, the trial court stated: (p.23)

- when boys are required to pit themselves against their fellows in an attempt to perform a take-down from a standing position, they may be expected to exert themselves fully and this becomes a competitive situation of the sort that places severe stress upon the equipment employed.

- If the Board of Education undertakes to include the art or sport of wrestling in the compulsory education programme, as it did in the present instance and as, no doubt, many Boards throughout the Province do, there is a burden cast upon it to take the best safety precautions reasonably possible. With physical education for boys in several grades concentrated exclusively on wrestling during certain periods of the year, as was the evidence in the present case, and with three gymnasia available, to require that one gymnasium be provided

> with a mat large enough to fill the floor space and to be left permanently in place, is not, in my view, an unreasonable requirement. Such a practice would meet the safety standards which in the opinion of the experienced witnesses and, which opinion I accept, are the minimum required for competitive wrestling.

On appeal, the Ontario Court of Appeal agreed with the reasons for judgment given by the trial Judge and dismissed the appeal.

Eaton v. Lasuta et al. (1977), 75 D.L.R. (3d) 476.

Facts of the case. On May 10, 1973, a twelve-year-old student at Lochdale Elementary School in Burnaby, British Columbia, fell and broke her leg during physical education activities.

On the day in question, the physical education teacher, Muriel Lasuta, had decided to set aside the last class period to practice for the upcoming school sports day. Lasuta asked Eaton, the infant plaintiff, to volunteer for a "piggy-back" race, a race especially designed for non-athletic girls. Eaton was "tall, unco-ordinated, gangling, awkward and not athletically inclined." Lasuta assigned her to practice for this race, and told her to choose a "rider" who was smaller than herself and who weighed less. Eaton chose Lilian Chen.

Eaton, acting as "horse" with Chen on her back, began the race on the dry, grassy hockey field along with three other couples; but, after having run a very short distance, she tumbled and fell. As a result of the fall, Eaton suffered a broken leg.

Issue(s). Whether or not the physical education teacher, Muriel Lasuta, was negligent in encouraging the infant plaintiff, who was described as "tall, unco-ordinated, gangling, awkward and not athletically inclined," to participate in a "piggy-back" race. Furthermore, counsel for the plaintiff argued that the infant plaintiff could be described as handicapped and, accordingly, she should have been owed a higher duty of care than that owed to a normal child.

Reasoning applied by the court. In applying the 'careful parent' standard as the common law duty owed to a pupil by a physical education teacher, the court concluded that: (p. 480)

> - A careful and reasonable parent would not hesitate to allow his 12 year-old daughter to engage in a "piggy-back" race on a grass hockey field on a sunny afternoon in May.

Also, the court quoted the following from the case of **Jones v. London County Council** (1932), 48 T.L.R. 368:

> - Even if it were assumed that the game was one in which one or more of the competitors was likely to fall, that would not be sufficient to establish a case of negligence; otherwise it might be said that no instruction in physical exercise or games could ever be given in a school without the authorities being liable if a boy fell and happened to hurt himself.

Moreover, the trial court also said: (p. 478)

> - The infant plaintiff in the case at bar was described as "tall, gangling, awkward, unco-ordinated, and not athletically inclined." I do not consider that these facts rendered the "piggy-back" race an unsuitable activity for the infant plaintiff in this case.
>
> - I further do not consider that the foregoing description of the infant plaintiff casts her into the category of a "handicapped" student.

The action was dismissed, thereby exonerating the defendant teacher from the negligence charge.

Thornton v. Board of School Trustees of School District No. 57 (Prince George) (1975), 57 D.L.R. (3d) 438.

Facts of the case. Gary Thornton, a fifteen-year-old student at Kelly Road Secondary School in Prince George, British Columbia, was participating with his classmates in a physical education class on April 6, 1971. The physical education course was mandatory, but choices of activity were provided for the students. On this date, Gary and half a dozen other students chose gymnastics. The majority had chosen floor hockey, and the remainder chose weight lifting. Once a student had made a choice of activity, (s)he was required to participate in it.

Edamura, the physical education instructor in charge of that class, organized the class into three groups, and gave directions that floor hockey be played on the gym floor while gymnastics took place on the stage with weight lifting assigned to a far corner of the stage. Then Edamura sat at a desk, which was positioned such that he could look and observe all three events. He proceeded to fill out students' report cards.

Gary and his group were for the first time attempting and practicing aerial front somersaults by jumping off a springboard and landing on a wrestling mat covered with two bundles of large foam rubber chunks contained in rope nets. To aid in gaining height and a better take-off, they asked the teacher permission to place a vaulting horse at the low end of the springboard. The teacher acquiesced to their request, and returned to his report card writing.

The boys had very little experience in gymnastics and their teacher had not warned them of the inherent dangers for novices doing somersaults on the equipment they had set up. As the boys were practicing, a number of them succeeded in doing the somersault onto the chunks. At one point, however, a student named Larry Karlson attempted a double somersault and made a poor landing, thereby injuring his wrist, which much later was pronounced broken. Larry went over to Edamura and complained of pain in his arm, of being winded, and of his wrist hurting. Looking for gross swelling, Edamura casually examined the wrist. He then told Larry to go put it under cold water. The teacher did not inquire as to what kind of manueuvre Larry had attempted on the springboard, nor had he seen it happen. The teacher and the boys then placed Add-a-Mats around the foam chunks. But Edamura still did not warn or caution the boys. He resumed writing at his desk.

Shortly thereafter, Gary Thornton proceeded to the spring and attempted another somersault. This time, he overshot the foam chunks and landed on his head on the Add-a-Mats placed around the perimeter of the foam chunks, suffering a serious injury to his neck rendering him quadriplegic.

Issue(s). Whether or not the injury sustained by the plaintiff resulted from the alleged negligence of the physical education teacher, Edamura, in that he failed in his duty of care to the plaintiff.

Reasoning applied by the court. The trial court ruled in favor of the plaintiff and awarded him $1,534,058.00 in damages. In making the decision, the court stated: (pp. 444-449)

- I am satisfied that the original arrangement consisting only of the spring-board and chunks was not dangerous. However, when the "box horse" was added a whole new dimension was involved. I think it is important to remember that these boys had never before used this equipment in this fashion.

- In my opinion, the "configuration" should have been recognized by any reasonable physical education instructor as one fraught with danger.

- The whole of the evidence leads me to find that these boys, possessing such limited expertise in gymnastics, had undoubtedly not progressed to the point where they could be trusted to somersault from this unpredictable, dangerous configuration. I do not suggest that each piece of equipment was **per se** dangerous. I am concerned with the "configuration". I think that Edamura should have taken care to instruct these boys on the use of the configuration. They had never used it before. He should have given them some advice, some instruction, a word of caution, and, at least imposed some limits on what they could or could not do in the circumstances. His attention to them was, in my opinion, casual.

- Quite apart from the breach of duty as an experienced physical education instructor as I discussed it earlier, there is at least a duty on him to act as the "careful parent of a large family". Once one youngster had become hurt would not a prudent father want to know how and why his child had become hurt in order to avoid the same kind of risk to another child? I think he would have. I think any reasonable interpretation of that evidence must surely include the fact that Edamura "qua teacher or surrogate parent" should have foreseen further trouble. That is the least amount of care at that time in those circumstances that Edamura should have taken.
- Edamura's duty as a physical education instructor was to recognize the "configuration" in this circumstance as an inherently dangerous one. He was in breach of that duty when he permitted these youngsters to use it to perform manoeuvres when he knew, or ought to have known, there was considerable danger for novices somersaulting on that configuration. In any event it seems to me Edamura failed in what might be described as a lesser duty of a careful parent not to foresee the risks of further injury once he learned of the injury to Karlson....He accordingly is liable.
- There can be no doubt that if the defendant Edamura is liable then the co-defendant Board of School Trustees is also liable. The relationship of master and servant existed between the Board and the teacher and the activity in question was part of the physical training of the pupil and therefore within the scope of employment of the teacher.

With regard to whether or not the plaintiff was contributorily negligent, the court further stated that: (p. 451)

- I find the defendants have failed to establish contributory negligence.

On appeal to the British Columbia Court of Appeal, the appeal as to liability and contributory negligence was dismissed. However, on appeal to the Supreme Court of Canada the plaintiff's award was reduced to $859,628.00. The Supreme Court of Canada concurred with the reasoning of the trial Judge in all other respects.

Boese v. Board of Education of St. Paul's Roman Catholic Separate School District No. 20 et al., (1979) 97 D.L.R. (3d) 643.

Facts of the case. On March 19, 1976, thirteen-year-old Thomas Boese, a student at the E. D. Feehan High School, Saskatoon, Saskatchewan, suffered a fractured leg during a physical education class when he did a vertical downward jump from seven-foot high bleachers on to a mat below covering the gymnasium floor. The physical education class was compulsory for Boese's Grade VIII class, and the jump comprised one of several exercises of an obstacle course in a movement education class. Since Boese was not interested in sports, he participated only because it was required of him. At the time of the accident, he weighed 135 pounds and measured 5 feet 2 inches in height. Boese had previously attempted this jump on the same date, and was not pleased about it. He expressed his anxiety to Cenaiko, the student teacher immediately supervising this class, telling him that he felt shaky and did not want to repeat the performance. But Cenaiko requested that the boy jump again. Boese acquiesced. As he performed the second jump, while descending on to the mat below, [illegible]s leg buckled under him resulting in a fracture of the left tibia at the junction of the middle and lower third.

Issue(s). The issue in this case was stated explicited by the trial Judge as follows: "The question in the case at bar is: Would a reasonably careful parent have felt apprehension at seeing his 13-year old obese, overweight boy do a vertical jump from a height of seven feet to which he was relatively unaccustomed, especially after that boy had expressed some concern in performing the exercise? Or again, could a careful parent reasonably foresee risk of injury arising to an inexperienced child under those circumstances?" (p. 651)

Reasoning applied by the court. In ruling for the plaintiff and awarding him $8,498.00 in damages, the court stated: (pp. 648-649)

- The generally accepted principle of law is that school authorities are under a duty to exercise the same standard of care over children as would be exercised by a good parent with a large family.

- The supervisory duties of the teacher required him to guard against foreseeable risks to which the inexperienced infant was exposed.

- The duty is to exercise such reasonable care as will avoid the risk of injury to such persons as one can reasonably foresee might be injured by failure to exercise such reasonable care. It is not enough that the event should be such as can reasonably be foreseen. The further result that injury is likely to follow must also be such as a reasonable man would contemplate before he can be convinced of actionable negligence. Remote possibility of injury occurring is not enough. There must be reasonable probability to lead a reasonable man to anticipate it. The existence of some risk is an ordinary incident of life, even when all due care has been, as it must be, taken. The question is: Would a reasonable man anticipate injury?

- Normally, conformity to common practice in any given circumstances is **prima facie** [on its face] evidence that the proper standard of care is being taken, but not conformity to common practice in one school.

- Any jump -- it does not have to be from a height of seven feet -- is potentially dangerous. Careful parents are concerned when their children jump from any appreciable height.

- It [the vertical jump] serves no useful purpose, and it has a dangerous element involved in it. It was foreseeable that an accident could happen.

Myers v. Peel County Board of Education, (1977) 2 C.C.L.T. 269.

Facts of the case. Gregory Myers, a fifteen-year-old student in Grade XI at Erindale Secondary School in Peel County, Ontario, was seriously injured while attempting a gymnastic manoeuvre during a physical education class. Walter Jowett, his physical education teacher, was also on the day in question looking after another gymnastics class, that of one Mr. McBride, the Grade XII physical education teacher who was absent due to illness. At the time of the accident, Jowett was carrying out gymnastics testing on McBride's Grade XII students in the gymnasium.

Greg Myers and his friend, Michael Chilton, another Grade XI student, requested permission from Jowett to go upstairs to the exercise room, which was one floor above the gymnasium, to practice on the rings. The rings consisted of two wooden rings suspended from the ceiling on parallel wires about two feet apart and from 7 to 8 feet above the vinyl covered concrete floor. Permission was granted, and so Myers, Chilton, and some other pairs of students (evidence for the number is conflicting) proceeded to the exercise room.

With Chilton as his spotter, Myers commenced doing manoeuvres on the rings. [In Grade X, Myers had learned certain moves and manouvres classified as Level 1 on the rings. Also, he had learned the necessity and importance of having a spotter, whose function was to catch the performer, if he fell, or break the force of his fall, to prevent injury.] A movement on the rings always ends in a dismount. For Level 1, the concluding dismount is "swing to skin the cat dismount"; for Level 2, it is "swing to straddle cut dismount," known in short as the straddle dismount. Particularly in regard to the latter dismount, Jowett had strongly emphasized to his students the necessity of having a spotter; he warned them that they never should try it "unless you know what you are doing and you have a spotter." Having successfully completed his work on the rings, Myers dismounted. His spotter, Chilton, moved away 10 - 15 feet. Myers was supposed to advise him before attempting any manoeuvre. But, suddenly, Myers got back on the rings and attempted a Level 2 straddle dismount, which he had never attempted before, and without his spotter's assistance. Myers released the rings too early and fell. Although there were two or three slab mats stacked underneath the rings, he suffered a broken neck, immediately becoming a quadriplegic.

Issue(s). Whether or not there was a breach of the standard of care on the part of the physical education teacher which, allegedly, resulted in the serious injury sustained by the plaintiff.

Reasoning applied by the court. The court, in trying to determine if there had been a breach in the standard of care which the physical education teacher owed to the plaintiff, applied four tests. These tests, and the court's response to each, follow: (pp. 284-287)

(1) Was the manoeuvre suitable to the plaintiff's age and condition (mental and physical) ?

- In my view, on the evidence before me, the answer to that question is "Yes".

(2) Was the plaintiff progressively trained and coached to do the manoeuvre properly to avoid danger ?

- On the evidence and the facts, as I have already found them, my answer to that question is "Yes".

(3) Was the equipment adequate and suitably arranged ?

- In my opinion, on this evidence, the stacking of two or three slab mats, as I have already described them, under the rings on top of a vinyl floor which is over a concrete floor, as a method of guarding against a known risk with foreseeable consequences, did not meet the standard of care imposed on school authorities for the protection of students taking part in physical education courses involving the apparatus known as rings.
- I note that Mr. Jowett told us that crash pads are used under the rings at the school where he now teaches.
- It often happens that a so-called standard practice goes on for a considerable time without evaluation until there is an unfortunate accident.
- Here, in my view, the fact that Gregory Myers fell out of the rings and broke his neck is a very graphic illustration that two to three slab mats stacked one on top of the other underneath the rings is inadequate protection against the known risk and foreseeable consequences of a gymnast (while over or under-extending) falling from the rings on his neck or head or back and suffering serious injuries.

(4) Was the manoeuvre, having regard to its inherently dangerous nature, properly supervised ?

- In my opinion, the mere presence of a teacher in that upstairs exercise room probably would have deterred the plaintiff, Gregory Myers, from the foolish move that led to his injuries.
- I hold that the defendants were negligent in not providing adequate supervision of that upstairs exercise room, and such negligence was a contributing factor to the plaintiff Gregory Myers' injuries.

The trial court concluded that the plaintiff was contributorily negligent and apportioned the fault 80% to the defendants and 20% to the plaintiff. Thereupon the plaintiff received 80% of his damages which were assessed at $80,000.00. However, the defendants appealed to the Ontario Court of Appeal. The appeal was allowed and the action was dismissed. The defendants then appealed to the Supreme Court of Canada where the appeal was allowed and the trial judgment was restored. In making this decision, the Supreme Court of Canada emphasized that the 'careful parent' standard remains the appropriate standard for school liability cases.

Accidents in School Laboratories and Industrial Shops

Ramsden v. Hamilton Board of Education (1942), 1 D.L.R. 770.

Facts of the case. Sixteen-year-old Ramsden sustained injuries to his right leg while undergoing classroom instruction in manual training under the supervision of his teacher, Mr. Scott. Mr. Scott was present in the classroom (at his desk) when the accident occurred.

Mr. Scott had warned all of his students about the dangerous nature of the machines in his classroom. And, on many occasions, he had previously warned Ramsden to return immediately to his bench after having left it to gather tools elsewhere. Warning was also given to Ramsden to stay away from McKelvie, a classmate, during class hours to avoid trouble.

On the day in question, Ramsden was standing quite close to McKelvie and holding a chisel in his hand. Ramsden had just asked McKelvie a question and, while awaiting his reply, Ramsden (who was previously holding the wooden handle of the chisel in his right hand and the blade in his left) "flicked" the chisel blade up and down. Ramsden was standing quite close to the perimeter of a revolving sanding wheel. The chisel blade came into contact with the revolving wheel and, as a consequence, was immediately and violently hurled downward, thereby penetrating Ramsden's right thigh and severing the femoral artery. Due to the clotting of the blood, gangerene set in his foot and it was necessary to amputate that leg six inches below the knee.

Issue(s). The issues were concerned with the following allegations put forth by the plaintiff in the statement of claim: (pp. 771-773)

1. that the supervising teacher, Mr. Scott, had negligently left the room, and it was during such period of absence that the accident complained of took place.
2. that Ramsden was never warned of the dangers of such a wheel.
3. that the defendants did not provide adequate supervision of the students, while engaged in a regular course of study.

Reasoning applied by the court. In exonerating the defendant teacher from the negligence charge, the court responded to the above issues in the following manner: (pp.771-773)

- I am unable to find anything, in the evidence, to justify a finding that Mr. Scott left the room in question after he had returned therein from a meeting at the Auditorium, but, there is evidence from which I do find, as a fact, that once he returned therein, from the Auditorium, he did not leave it until after the accident, to help remove Ramsden. Having so found, then the allegation of "having negligently left the room" cannot be substantiated and fails.
- I do find that the presence or absence of Mr. Scott, in or from the room, had nothing to do with the accident.

- I accept the evidence of Mr. Scott, who stated that all the students had been warned as to the nature of the machines... it is to be noted that Ramsden was not injured whilst operating the machine, but that he was hurt by holding or carrying a dangerous tool in too close proximity to a revolving wheel. The accident had nothing to do with the "operation" of the wheel!

- there is ample evidence to justify me in finding, as a fact, that at the relevant time, the discipline was good, the pupils were carrying on in an orderly manner, under supervision then being exercised in a reasonable and efficient manner by the supervisor, Mr. Scott, who was present at the time in the room, at a place where he could reasonably be expected to be, to exercise such supervision.

- I find, as a fact, that it [the accident] was as a result of Ramsden voluntarily and knowingly assuming the risk, whilst engaged with McKelvie as above described, of imprudently and negligently "flicking" the blade in too close proximity to the revolving perimeter of the sander, and, it was while the said blade was being imprudently, negligently and nonchalantly so flicked, that it came in contact with said revolving perimeter -- that the "flicking" of the blade, in the manner and under the circumstances above described, constituted negligence, and that said negligence was the direct cause or **causa causans** of this sad affair.

- It is a most regrettable accident, for the happening of which the infant plaintiff is alone responsible.

Dziwenka v. The Queen, [1972] 25 D.L.R. (3d) 12.

Facts of the case. A deaf mute since birth, Marvin Dziwenka was on November 30, 1961, a student at The Alberta School for the Deaf. At this school he was enrolled in a woodworking class under the instruction of one Mapplebeck. Mapplebeck described Dziwenka as "very competent ... quite skilled ... for a boy his age [18] ... quite an accomplished operator of power tools." Dziwenka's competency in woodworking was a result of previous training in the use of power tools.

On the day in question, while engaged in constructing a chest of drawers as a project in woodworking class, Dziwenka discovered that his finished drawers were a little too deep for the chest frame. To remedy the problem, it was decided that the circular power saw be employed. This saw could be properly used only after removing the safety guard.

On being alerted to Dziwenka's needs, the instructor, Mapplebeck, came to his assistance. After helping to remove the safety guard, Mapplebeck proceeded to demonstrate on one of the drawers how Dziwenka should cut the wood. He then supervised Dziwenka as he made a couple of cuts. When satisfied that the work was being done properly, Mapplebeck assigned one of the other seven boys in the class to stand on the other side of the saw to receive the drawers from Dziwenka and then to pass them back to him after each cut was accomplished. Feeling confident that the work was proceeding properly, Mapplebeck then turned his attention to supervising the other students. In order to do this, he moved about 15 to 25 feet away from the boys operating the saw. Shortly thereafter, while operating this circular saw, Dziwenka sustained serious injuries to his left hand, ultimately involving the loss of two fingers.

Issue(s). Whether or not the injury sustained by the plaintiff resulted from the alleged negligence of the defendant teacher, Mapplebeck, in that he failed to give adequate supervision of the dangerous work being carried out by the plaintiff.

Reasoning applied by the court. The trial court found the defendant teacher to be 60% at fault and the plaintiff 40% at fault. However, on appeal to the Alberta Supreme Court, Appellate Division, it was held that the instructor was not negligent, with the court concluding that: ([1971] 16 D.L.R. (3d) 190 at p. 201)

- Dziwenka's momentary inattention was the sole "author of his injury" and that, under all the circumstances set out in the case, Mapplebeck did not fail in the duty of care owed to Dziwenka.

The case was further appealed to the Supreme Court of Canada where the trial judgment was restored. In concurring with the trial judge's reasoning the Supreme Court of Canada stated: (pp. 21-22)

> - The finding of want of sufficiently close supervision must also be judged in the light of evidence that the plaintiff was the only student working with power equipment at the time of the accident.
>
> - The question of the negligence of Mapplebeck in this case is not foreclosed by the proof given of the plaintiff's awareness of the danger in the operations to which he was assigned. Nor can his momentary inattention provide complete exoneration of the defendants if there was a breach by Mapplebeck of his duty of care to the plaintiff.
>
> - The duty of care owing to a student, especially a handicapped one as in this case, in respect of his personal safety while operating dangerous machinery, is a stricter one than that owed by an employer to an employee working with dangerous machinery.
>
> - I do not find it improbable that the accident would not have happened if the instructor had directly supervised the operations until they were finished.

James et al. v. River East School Division No. 9 et al. [1976] 58 D.L.R. (3d) 311.

Facts of the case. Eighteen-year-old Joni Lou James, a Grade XII student at River East High School in River East School Division No. 9, Manitoba, was injured while carrying out an experiment in the chemistry laboratory of that school on September 22, 1972.

On the morning in question, the chemistry lab was being supervised by Ronald Peniuk, the school's experienced chemistry teacher. As was his usual practice, Mr. Peniuk distributed written instructional materials, and gave verbal instructions as well, to his students on the day prior to their performing the experiment. Then, on the morning that the experiment was to be performed, Mr. Peniuk gave additional brief instructions on the blackboard.

Joni Lou James and her lab partner followed the instructions provided by Mr. Peniuk in carrying out their experiment, which was to determine the precise atomic weight of tin. The experiment was a dangerous one. The two ingredients to be used were tin and concentrated nitric acid. Nitric acid "penetrates rapidly-- it burns deeply -- it is corrosive..." Goggles were available to the students but they were not required, nor did Mr. Peniuk suggest they be used. During the course of the experiment, as Joni Lou was heating the mixture of tin and nitric acid in an evaporating dish over a Bunsen burner, the bubbling mass blew up in her face. She suffered eye damage as a result of the acid spattering into her eyes, and she also suffered facial scars around her right lower lip, her left lower eyelid, and the mid-portion of her forehead.

Issue(s). Whether or not the plaintiff's injury resulted from the alleged negligence of the science teacher, Mr. Peniuk, in that he failed to instruct and supervise the plaintiff properly.

Reasoning applied by the court. The trial court ruled in favor of the plaintiff and awarded her damages totalling $30,921.65. The court's decision was based on the following reasons: (pp.313-315)

- Normally, conformity to common practice in any given circumstance is **prima facie** evidence that the proper standard of care is being taken ... but not conformity to common practice **in one school**.

- The facts of the present case, however, are that a Grade XII student was instructed to conduct a lab experiment which was dangerous. It was foreseeable that an accident would happen. One did.

- Goggles were available. None were recommended by the teacher, Mr. Peniuk. His excuse that the students knew about the goggles and that none requested them, is not valid.

- Students must be told, when necessary "wear goggles."

> - I find here a failure to instruct properly, a failure to caution and to supervise properly and that an unfortunate and foreseeable accident occurred, and that it could have been avoided if the defendants had not been negligent and if Mr. Peniuk had not omitted to do what he should have done in the circumstances.

On appeal to the Manitoba Court of Appeal, the appeal was dismissed.

Hoar v. Board of School Trustees, District 68 (Nanaimo) and Haynes, [1984] 6 W.W.R. 143.

Facts of the case. On April 30, 1980, Hoar, a seventeen-year-old Grade XII student in British Columbia injured his left hand while using a woodworking machine improperly in class.

On the first day of class, January 29,1980, the instructor, David Haynes, had informed his students that, if they were absent from any classes, thereby missing instruction of critical importance to their safety, they could see him at another time outside of class. He then informed them of times when he would be available outside of class time. Haynes also discussed safety with his students, stressing the importance of taking care in using the different machines in the workshop. In addition, he gave them a set of safety instructions, fifteen pages of general and specific safety rules pertaining to the different machines. Moreover, he provided the students with a textbook that contained two pages of description and illustrations on the jointer and its use. Besides giving an exam later to test the students' knowledge of the contents of the textbook and the safety instructions provided, Haynes also gave a series of demonstrations on the proper use of these machines. However, for several of these days, Hoar was absent due to illness, thus missing several of these demonstrations -- especially the demonstration on the use of the jointer. But he did not consult his teacher about the missed instruction. On the day in question, he used the jointer improperly and sustained injuries to his left hand, severing the tips of three fingers.

Issue(s). The issue was stated explicitly by the trial judge as follows: "The question to be answered here is: Was there a particular precaution which Mr. Haynes might reasonably have taken which he did not take?" (p. 145)

Reasoning applied by the court. The trial court divided liability equally between the plaintiff and the defendant teacher because the court found that it was almost impossible in this particular case to establish different degrees of fault. In apportioning the fault equally, the trial judge,in addressing the issue stated above, said: (pp. 145-146)

> - I answer the question affirmatively and say that the precaution was to inform himself of absence from demonstrations so that without fail he could give a make-up demonstration after the student returned.
>
> - If he was 'bound to take notice of the ordinary nature of young boys' he could anticipate that at least some of his students would not bother to ask for make-up demonstrations and would be willing to take their chances without them.
>
> - The plaintiff says he watched other students operate the jointer and thought he had operated it himself about 15 times before the accident befell him. It is hard to believe that he had consistently misused the machine without detection. For all I know with any certainty he may have misused it only this once when he came to grief.
>
> - He [Mr. Haynes] can only be faulted in one particular but that is a vital particular. Since he thought it essential to give demonstrations it follows that it was essential that the demonstrations be received by each student and I hold that he bore responsibility to check to make sure that the demonstrations were received by absent students. He, of course, knew of the absences because he kept an absentee list.

On appeal to the British Columbia Court of Appeal, the appeal was dismissed.

Accidents During Class Excursions

Beauparlant et al. v. Board of Trustees of Separate School Section No. 1 of Appleby et al., [1955] 4 D.L.R. 558.

Facts of the case. The Director of Studies and two grade teachers of a school under the jurisdiction of the Separate School Section No. 1 of Appleby, Ontario, granted students in two grades an unauthorized half holiday on May 16, 1952, to attend a school concert in the nearby town of Warren. The concert was being held to honor the birthday of a priest.

Transportation to Warren, which was eleven miles from Appleby, was arranged by one of the teachers. The means of transportation arranged was a stake-body truck which contained a dump that the owner himself had erected consisting of soft wooden sides reinforced by some chains. The dump was 12 feet in length and 6 feet 11 inches in width.

On the day in question, 66 students crowded into the dump of this truck to make the trip to Warren. After having travelled about 4 miles, one side of the truck's dump gave way. Many students, including the infant plaintiff, were thrown out of the dump, resulting in the infant plaintiff being severely injured.

Issue(s). The issue is based on the plaintiff's allegation that "the defendant Board of Trustees is liable for the damages sustained, on the ground that the infant plaintiff, while in the custody of and under the control of the said School Board, its servants or agents, during school hours, was directed by the School Board, its servants or agents, to travel in the vehicle for purposes connected with his schooling." (p.559)

Reasoning applied by the court. The trial court dismissed the action against the School Board on the basis of the following arguments: (p. 559)

> - The chairman of the School Board and the secretary-treasurer, both of whom gave evidence , say that no request of any kind was made to the School Board by any of the teachers, nor was any permission given.
>
> - I have come to the conclusion that the teachers, in organizing this trip and in allowing the children their freedom from their regular studies, were exceeding their authority and were not acting within the scope of their authority, expressed or implied.

Moddejonge et al. v. Huron County Board of Education et al., [1972] 25 D.L.R. (3d) 661.

Facts of the case. On May 14, 1970, two fourteen-year-old students, Geraldine Moddejonge and Janet Guenther, lost their lives in a swimming accident.

The girls were students at South Huron District High School in Ontario. John McCauley was employed by the local school board as co-ordinator of their school's outdoor educational programme, which was being conducted on the property of the Ausable River Conservation Authority.

On the day in question, McCauley was one of the supervisors of a field trip to the Conservation Authority reservoir. A number of female students had prevailed upon him to take them swimming there. He consented. Although he had a Master's degree in outdoor education, he was unable to swim. Janet Guenther could not swim either, whereas Geraldine Moddejonge was an average swimmer.

As soon as they arrived, McCauley explained that there were limits as to where they could swim. They were limited to swimming in the shallow water, which was set off by an irregular line of demarcation. An area of deep water with a sharp drop-off lay beyond the line.

While some of the girls were splashing each other and playing in the shallow water, a breeze suddenly developed, causing a surface current to develop some waves, and making it difficult to discern where one was in the water. This current carried Guenther and another girl over the drop-off area into the deep water. McCauley, who was pacing up and down the beach at the time, saw the breeze develop but did not warn the girls or take any action on it. Moddejonge swam out to the two girls, successfully aided one girl back to the beach, and went back into the deep water for Guenther. Unfortunately, she drowned as she and another girl attempted to rescue Guenther, who also drowned. McCauley, who could not swim, walked out into the water as far as he could in an attempt to try and save the girls.

Issue(s). Whether or not the defendant, McCauley, was negligent in that he was allegedly in breach of a duty which he owed to the deceased -- a duty to act as a reasonably prudent parent would in guarding against foreseeable risks.

Reasoning applied by the court. The court found the defendant, McCauley, guilty of negligence and, in so doing, justified its conclusion by making the following statements: (pp. 666-667)

- I take the view that the duty of care which has been determined by Lord Esher is applicable to the present case. It was the duty of McCauley to guard, in the same manner as a reasonably prudent parent would guard, against foreseeable risks to which Janet Guenther was exposed under the circumstances.

- It is true that the occurrence of death does not establish negligence.

- It seems to me , however, that a reasonably careful parent would have been unlikely to permit his daughter, who was unable to swim, to go into this particular body of water without exercising more care for her safety or ensuring that someone else did so on his behalf.

- There was a real risk that this girl, playing with a group of her own age in water adjacent to a curved line of a fairly steep drop-off which was not marked, might inadvertently fall into danger and there was a duty to guard against that risk eventuating, McCauley was unable to swim. He knew there was no life-saving equipment available.
- McCauley became aware, while pacing up and down the beach, that a fairly fresh breeze had sprung up but he took no steps to guard against the foreseeable risk to which the girl was exposed by reason of the breeze.
- ... he [McCauley] had moved away from the girls at a time when they were in close proximity to the demarcation line.
- I have come to the conclusion, reluctant as I am to add to his sorrow, that he failed to fulfil his duty.

The court further concluded that since McCauley was acting within the scope of his employment the school board (co-defendant) was also liable.

Accidents With Regard To Pupil Transportation

Tyler et al. v. Board of Trustees of Ardath School District, [1935] 1 W.W.R. 337.

Facts of the case. A twelve-year-old Saskatchewan boy sustained injuries to his arm when an accident occurred to the van which was being used to transport him and some other students to and from school on January 3, 1933. The driver of the van was an "independent contractor" employed by the School Board of Ardath.

About 4 o'clock in the afternoon on the day in question, the infant plaintiff and other school children were being driven home in a horse-drawn van or wagon, that had been in use for several years. The van was drawn by a team of two horses, and an ordinary, though "unreliable," farm harness was used. At the time of the accident one of the reins got loose from the bit and the driver lost control of his team of horses. The horses overturned the van into a ditch, and the infant plaintiff suffered a broken arm, that ultimately required an operation to set it properly.

Issue(s). Whether or not the school board was vicariously liable for the alleged negligence of the van driver, in the case where the van was provided by the school board and the driver was classified in the written contract as an "independent contractor."

Reasoning applied by the court. In finding the school board liable for the van driver's negligence, the court stated: (pp.342-343)

- The board controls the route and might discontinue the use of the van at any time for any just reason without previous notice to the contractor.
- The contract is not to be assigned without consent, and its performance is subject to any departmental rules.
- Without discussing all the provisions of **The School Act,** it seems to me quite clear that the board of trustees had power to provide for the conveyance of the scholars and when they exercised the power, even whether they had authority to do so or not, they were under a duty to see that the pupils would be carried with reasonable safety and responsible for any negligence of the person or persons employed by them to effect the purpose.

Sleeman and Sleeman v. Foothills School Division No. 38 et al., [1946] 1 W.W.R. 145.

Facts of the case. On December 20, 1943, a collision occurred between two motor vehicles at Walker's Corner, an intersection of two dirt highways about four and a half miles west of Cayley, Alberta, resulting in serious injuries to the infant plaintiff. One of the two vehicles was a school van, on which the infant plaintiff was riding to school. It was being driven by its owner who had entered into a written agreement with the school trustees to convey students to the Cayley School. The other vehicle was a two-ton Chevrolet truck, carrying about 200 bushels of wheat.

At the time of the accident, the truck crashed into the side of the school van and knocked it some distance until it came to rest on its side. The force of the impact pushed the infant plaintiff through a window of the van, pinning her underneath it as it fell on its side. She sustained severe injuries to her right arm, which was fractured above the elbow, and to her right leg, which was broken in two places above and below the knee.

Issue(s). Whether or not the school division was liable for the alleged negligence of a van driver who owned the van but was under contract with the school division to convey school children to Cayley School.

Reasoning applied by the court. In finding the school board to be vicariously liable for the van driver's negligence, the court reasoned as follows: (pp.158-159)

- In the case at bar, the defendant Kocher entered into a written agreement on September 22, 1941, with the trustees of Foothills School Division No. 38 to convey the school children to the Cayley school.
- I think that this contract clearly shows that the relationship of master and servant was constituted between the school division and the defendant Kocher. ..... the defendant Kocher was driving the bus in question in the course of his employment and on his master's business and for his negligent acts the defendant school division would be liable.
- However, even if in fact the relationship of master and servant did not exist between Kocher and the school division, it is my view that for the reasons laid down in **Cochrane v. Elgin Consolidated S.D.,** (see note below), the school division is liable for the negligent acts of the defendant Kocher in transporting the infant plaintiff.

NOTE: In **Cochrane v. Elgin Consolidated S. D.** [1934] 2 W.W.R. 409, 42 Man. R. 257, a judgment of the Court of Appeal of Manitoba, the headnote reads as follows:

- Under section 140 (3) of **The Public School Act**, 1930, ch. 34, the duty imposed upon a union school district to provide for the conveyance of certain pupils to and from school is imperative; and, therefore, the fact that the district has employed an independent contractor to transport the pupils does not free it from liability for injuries resulting to a pupil because of his negligence (**Shrimpton v. Hertfordshire County Council** [1911] 104 L.T. 145, 55 S.J. 270, applied).

Lovell et al. v. Budd and Board of School Trustees of School District No. 66 (Lake Cowichan), (1956) 5 D.L.R. (2d) 324.

Facts of the case. On the day in question, the driver of a school bus for the Board of Trustees of School District No. 66 (Lake Cowichan), British Columbia, had deposited some six children, including the infant plaintiff, at a regular bus stop at noon hour. The children had been forewarned not to leave the stop until after the bus had left and a notice to this effect was posted inside the bus. As well, the infant plaintiff's mother had warned her not to leave the stop until the bus had departed, and the child was never known to have disobeyed that warning.

At the time of the accident, the infant plaintiff, a six-year-old girl, had got off the bus where and as she should have. The bus driver closed the bus door and proceeded on his way. As the bus turned a corner a little distance from the stop, the little girl was seen lying on the road. She had sustained these injuries: a fracture of the right femur, a puncture wound behind her right knee, bruises and abrasions on both her legs, and a small laceration and bruise around her right leg.

Issue(s). Whether or not the bus driver was negligent in allegedly "failing to see whether or not the infant plaintiff had safely alighted from the bus and had got safely away before the bus proceeded on its way from the point at which she was let off the bus." (p. 325)

Reasoning applied by the court. In dismissing the action against the bus driver and the school board, the court stated: (p.326)

> - ...the driver and the Board of School Trustees have taken all the precautions that they could reasonably be required to take in conveying the children to school and safely depositing them at their respective bus stops on their return. This accident took place when the bus had proceeded some distance from the bus stop and I do not think there could be any obligation except to exercise care on account of the children being so young, after they had been safely deposited at the bus stop.
>
> - From the evidence I would think the fair inference to be that this little girl, after being deposited there and after the bus had gone ahead, was running alongside and ran into the rear part of the bus either being carried forward by her own motion or falling in checking it against the rear part.
>
> - It would seem to me that the accident happened by reason of what she did rather than from any negligence on the part of the bus driver.
>
> - In all these circumstances, I am unable to find that the bus driver was negligent.

Finbow v. Domino et al., [1957] 23 W.W.R. 97.

Facts of the case. On May 18, 1955, the infant plaintiff, a ten-year-old mentally retarded boy (with the mental age of a child three to three and a half years old), was a pupil in a special Winnipeg School conducted by the Association for Retarded Children. The association (in agreement with the various parents) had arranged for the pupils to be transported to and from their homes by a taxi service, namely, Moore's Taxi Limited.

When school ended on the day in question, the taxicab took five children to their respective homes. The infant plaintiff, John Finbow, was the last of these. The taxi company had agreed to have its taxicab stop on the south side of McNaughton Avenue next to John's home. But, at the time of the accident, the taxicab had stopped on the opposite side, thus requiring that John cross the highway to reach his home. The taxi driver got out on his left-hand side, the traffic side, and John followed him. No traffic was coming, so the driver got back into the cab behind the wheel, leaving John outside. The boy had walked some distance before he realized that he had not been let out on the south side. By the time he recognized his home across the street and saw his mother standing in the doorway, a Union Fuel truck had turned into McNaughton Avenue and was proceeding towards him. John was about two-thirds of the way across the street when he was run down by the truck. He sustained injury to his leg, requiring that it be amputated below the knee, and also a three-inch laceration at the base of the skull down to the bone.

Issue(s). Several issues were dealt with in this case, but the one relevant to the scope of this study was whether or not the school was vicariously liable for the taxi driver's negligence.

Reasoning applied by the court. Although the taxi driver was found guilty of negligence, the court dismissed the action of vicarious liability against the school on the basis of the following reasons: (pp. 100-101)

- The association [school for retarded children] agreed to have transportation supplied, and in fact it lived up to its agreement.
- Its responsibility was not that of an insurer. Nowhere did it agree to underwrite the safety of the children.
- Viewing its position from the standpoint of contract, I hold that the association discharged its obligation in the matter of transportation when it selected a licensed and competent taxi company for that purpose, when it arranged for an adult to accompany the children, and when it took such steps as an employer reasonably could to see that the taxi company was duly and properly informed of its general and special responsibilities.
- Nor can the association be held liable in tort. In relation to it the taxi company stood in the position of an independent contractor. For the negligence of an independent contractor the principal is not liable, except in certain exceptional situations, none of which applies here.

Baldwin et al. v. Lyons and Erin District High School Board, [1961] 29 D.L.R. (2d) 290.

Facts of the case. On the afternoon of January 28, 1960, a school bus, owned by a Mr. Lyons (who had entered into a contract with the Erin District High School Board of Ontario) was transporting 27 students, including the infant plaintiffs, from the District High School to their homes. The bus was being driven by Leitch, an employee of Lyons. At about 4:20 p.m. on Wellington County Road, the school bus collided with a C.P.R. train. Leitch was killed and the three female infant plaintiffs were seriously injured.

Issue(s). To decide whether or not Lyons was an independent contractor, in order to determine whether or not the school board was liable for damages caused by the alleged negligence of Leitch, the bus driver employed by Lyons.

Reasoning applied by the court. The trial judge found the school board liable on the basis of a master-servant relationship which existed between the two parties due to the board's close and constant supervision over the manner in which the buses were driven. On appeal to the Ontario Court of Appeal the trial judge's decision was reversed. The court's sequence of arguments leading up to the reversal are as follows: (pp. 294-295)

- ... so far as this agreement is concerned, the position of Lyons was that of an independent contractor. In my view, it would require cogent and unequivocal evidence to demonstrate that the parties in fact changed that relationship into one of master and servant.
- Lyons was the sole owner of the bus and he was bound by the contract to pay the cost of insuring the bus; he serviced and maintained it at his own expense; he hired the drivers and discharged them without consulting the appellant Board.

- In three respects only, is there any evidence as to the Board having any communication with Lyons about the manner of driving of the bus or buses; he was warned about speeding, warned to be careful and upon occasion warned by the principal of the school to use some extra caution because of slippery roads or hazardous conditions.

- I think that anything passing between the Board and Lyons with respect to the manner of driving of the bus was not the exercise of control (certainly not detailed control) over the manner of driving, but was more by way of general admonition only, not to speed or be careful or to use extra caution.

- ... Lyons' conduct throughout as disclosed by the evidence is not indicative of any consent on his part to become the servant of the Board or of his actually having become its servant.... Lyons at all times remained an independent contractor.

In order to strengthen its argument, the court referred to the case of **Ainslie v. Leith Dock Com'rs**, [1919] S.C. 676 at p. 680, whereby Lord Mackenzie makes the following statement as to the detailed control required before it can be held that one is in a position of servant to another:

- An analogy has been suggested during the course of the argument with the fare who hires a taxi-cab. He has control to the extent of indicating where the driver is to go, whether he is to go to the right or the left, and possibly, under certain circumstances, whether he is to drive fast or slow; but as to the method by which the driver is to attain his end, the manner in which he is to drive his car, the speeds he is to put on at particular parts of the road, these are entirely and altogether without the control of the fare.

On appeal from the Ontario Court of Appeal to the Supreme Court of Canada, the Supreme Court of Canada affirmed the decision of the appellate court and dismissed the appeal.

Mattinson et al. v. Wonnacott et al., [1975] 59 D.L.R. (3d) 18

Facts of the case. Five-year-old Richard Mattinson was a kindergarten student at a school in Brougham, Ontario, on December 9, 1970, when a tragic accident caused him to suffer a serious head injury.

Richard lived about four miles from the school, and it was necessary for him to travel to school by bus. His mother had made special arrangements with the bus driver to pick up Richard and drop him off at the end of the laneway leading to his house. The driver, Mrs. Cook, was hired by Brownwall Transit Limited, a company that had entered into a contract with the Ontario County School Board to transport some of its students to and from school.

On the day in question, Richard was one of the students on Mrs. Cook's bus being transported home after school. Prior to arriving at his home, Richard somehow managed to get off the bus unnoticed and proceeded to walk towards his home with two older boys. At about 3:30 p.m., he ran from a field out unto the highway and into the path of an oncoming car. The car driver saw him running towards the road from the field, but she did not sound her horn or apply her brakes in time to avoid striking him. Unfortunately, when she did apply her brakes, her car skidded some 36 feet and the right side of her bumper struck Richard, knocking him under the car and causing serious injury to his head.

Issue(s). The question addressed in the case was whether or not the bus company was acting as a servant of the board.

Reasoning applied by the court. The court found that the bus company was in fact acting as a servant of the board; and,since the court also found the bus driver was negligent,it concluded that the school board was also vicariously liable. In resolving the issue, the court stated: (pp. 26-30)

- In my opinion, Rose Cook was negligent in her duty to Richard. She was aware that he lived on the south side of a busy, heavily-travelled highway, and had agreed to see that he was dropped off on the south side of the highway at the end of his lane. She has conceded that she did not intend to let Richard off the bus at Green River School. She was aware of the risk to Richard should he attempt to cross the highway unsupervised.

- It has often been held that the duty owed by a teacher or supervisor is that he ought to take the same care of children in his charge as a prudent father would of his own children ... it would seem reasonable for a prudent father to take particular care of a five-year-old in the vicinity of a heavily-travelled highway.... the risk was thus not only foreseeable but well recognized.

- Brownwall had expressed through Mr. Gray [the manager of Brownwall] for some years prior to the accident concern with regard to the system itself. Suggestions had been made that a second adult was required on the bus. That adult would have been responsible for the supervision of kindergarten children including responsibility to see that they got on and off at their designated stops... no definite steps were taken either by the bus company or the board to affect any changes in the system of carrying the children although they were aware of the risk.

- ... the bus company and the board emphasized the substantial element of control which could be exercised by the school board over the bus company. For all intents and purposes, during the time that the bus company was transporting the pupils to and from school, it was acting as a servant of the board.

- I would not think it reasonable that the school board's duty to Richard would terminate the minute he left Brougham School and climbed on the bus. The transportation was specifically provided by the school board and the board retained a substantial degree of control over the bus company and certainly of discipline of the pupils while they were on the bus.

Holt v. Hay and Board of School Trustees for District 20, [1978] 23 N.B.R. (2d) 497.

Facts of the case. Kenneth Hoyt was a five-year-old grade one student at Loch Lomond Elementary School in New Brunswick when he sustained serious injuries while crossing the street near his home on November 1, 1974.

The school bus would leave his school at 3 p.m. Hence, the school board suggested that pupils whose classes ended at 2 p.m. could either wait until 3 p.m. or use the local bus line. Kenneth's parents elected to have him take the local bus home at 2 p.m. The local bus was operated by the Loch Lomond bus line. This line transported paying passengers to and from Saint John and the Loch Lomond area. It was not a school bus, but every day it normally carried about a dozen Loch Lomond Elementary School pupils (grades one and two) into Saint John on its 2 o'clock run for a fare of ten cents.

At about 2:15 p.m., on the day in question, Kenneth had just alighted from this bus, the bus had proceeded on its way, and Kenneth was crossing the heavily travelled Loch Lomond Road because his home was on the other side of the road. He had his head down, not looking for uncoming traffic, when a car driven by a Mrs. Bradley drove towards him. When she first saw Kenneth, he was near the center line of the two lane highway and some distance from her. But she did not sound her horn nor swerve left or right. Her car struck Kenneth, who suffered multiple injuries. Besides receiving several fractures, he suffered brain damage which resulted in serious physical and intellectual impairment.

Issue(s). Whether or not the school board was negligent in failing to provide transportation by school bus for the plaintiff, Kenneth Hoyt, upon his return home from school on the afternoon in question.

Reasoning applied by the court. In dismissing the action against the school board, the court stated: (pp. 505-506)

- ... no evidence was led to establish any contract between the Loch Lomond Bus Line and the School Board for the conveyance of school pupils or that the bus here at issue operated as a school bus. I am satisfied and find that it did not.

- It is clear I think that section 143 of the Regulation is, in each of its four subsections, discretionary or permissive in its terms and not mandatory. And it has been held that an action will not lie for failure to exercise a discretionary power although a proper exercise of the power could have averted foreseeable injury to persons or property : see **East Suffolk Rivers Catchment Board v. Kent**, [1941] A.C. 74.

- Moreover, I am not at all satisfied that had a school bus been provided by the Board, this accident would thereby have been avoided.
- I conclude and hold that the plaintiffs have failed to establish, by the necessary preponderance of probability, that any duty was imposed upon or assumed by the School Board or that any employee of the Board was in any way negligent.

Accidents in the Regular Classroom

No reported cases were found in this category.

Cases Regarding Accidents **outside of** Organized School Activities

The court cases in this section are briefed in the same manner as were the court cases in the preceding section. Again, they are presented in chronological order, but they are categorized under the following headings:

1. Accidents before school starts
2. Accidents during recess
3. Accidents during lunch hour
4. Accidents after school

Accidents Before School Starts

Scoffield et al. v. Public School Board of Section No. 20, North York, [1942] O.W.N. 458.

Facts of the case. The infant plaintiff suffered injuries from an accident while tobogganing on her school playground. On the property there was a hill which sloped towards the Humber River, with a drop of several feet extending from the river bank to the frozen surface of the river. This hill had been used for tobogganing for twelve years, during which time no accident had occurred. The tobogganing was supervised by teachers during recess. Also, the principal had informed these teachers that they should tell their pupils that they would not be permitted to toboggan without the consent of their parents. The mother of the infant plaintiff did not give this consent.

At the time of the accident, several pupils, including the infant plaintiff, were descending this hill on a makeshift toboggan. During the course of the ride, the infant plaintiff fell off the toboggan and was injured.

Issue(s). Whether or not the defendant school board was liable for the plaintiff's injury in that it allegedly did not provide adequate supervision.

Reasoning applied by the court. In dismissing the action against the defendant school board, the Ontario Court of Appeal in referring to the cases of **Gow v. Education Authority of Glasgow,** [1922] S.C. 260 and **Langham v. Governors of Wellingborough School and Fryer** (1932), 101 L.J.K.B. 513, at 515-516, stated that: (p. 460)

> - It has been held that it cannot be said that there is an absolute duty never to leave children without supervision.

Furthermore, the court stated: (p. 460-461)

> - The accident happened to the infant plaintiff at 8:45 a.m., certainly not later. Now, by s. 6(8) of the rules and regulations every teacher must be in her place in the school at least fifteen minutes before the opening of the forenoon session.
>
> - The teachers were in their classrooms at that hour as they were required to be by the rules and regulations. I cannot see any breach here.
>
> - I therefore conclude that in the circumstances the defendant board is not liable.
>
> - I have also found that, so far as supervision is concerned, there was supervision, and further that no amount of supervision would have prevented this accident.

Koch et al. v. Stone Farm School District, [1940] 2 D.L.R. 602.

Facts of the case. Immediately following the ringing of the school bell to begin school on the morning of February 23, 1939, the infant plaintiff (then twelve years of age) sustained injuries when he jumped from a one-storey woodshed into a snow drift on the grounds of his school.

On the morning in question, he, as pupil janitor, had arrived early at the school in order to start the fires. Two older boys at the school accompanied him, as they had done during the previous week. Once the fires were started, they would go outside and enjoy jumping off the woodshed into the snow drift. This form of amusement was forbidden by their teacher, who had given instructions early in the fall that the pupils were not allowed to climb on the buildings, and also forbidden by the father of the infant plaintiff, who had warned his son just before the day in question not to continue this practice of jumping off the shed.

The infant plaintiff was an intelligent boy and old enough to appreciate the danger inherent in this form of amusement. In knowing that it was forbidden by both his father and his teacher, he deliberately and wilfully took the risk in jumping from the woodshed on the day in question, only to suffer a rare leg fracture "at the tip of the spinal column of the tibia."

Issue(s). Whether or not the plaintiff's injury was caused by the alleged negligence of the teacher in not supervising the play of certain pupils (including the plaintiff) on the morning of the accident.

Reasoning applied by the court. The trial court dismissed the action against the school board on the basis of the following arguments: (pp. 603-604)

- On that morning the teacher was engaged in her duties in the school from the time of her arrival and properly so as her duty would be to be on hand in the school as the children, particularly the younger children, arrived and reported for school attendance.

- This is not an action for misfeasance, it is for non-feasance in an alleged lack of supervision of the play of certain pupils.
- There is nothing in the enumeration (of the **School Act**) to suggest any power to provide for the supervision of the play of the pupils.
- In the case of mere non-feasance by a board of trustees constituted under the **School Act** no claim for reparation will lie except at the instance of a person who can show that the statute under which the trustees act imposed upon them a duty towards himself which they negligently failed to perform.... it will be noted that in any case in which a board has been held liable in this Province it has been for misfeasance and not for non-feasance.
- It is enough to add that neither expressly nor by implication does the **School Act** impose on the trustees or the teacher, if she could be held to be their servant, any obligation to so supervise the pupils at their play, which could possibly suggest a duty to supervise the conduct of these three oldest scholars in the school yard before they reported themselves to the teacher on arrival in the morning.

Accidents During Recess

Schultz et al. v. Board of Trustees for Grasswold School District, [1930] 1 W.W.R. 579.

Facts of the case. John Hubert Schultz, a six-year-old pupil at a school operated by the Board of Trustees for the Grasswold School District in Alberta, was teetering on a teeter-totter with three older boys on his school playground on March 15, 1929, when he fell off the teeter and sustained personal injuries.

More than twelve years earlier, the board of trustees had provided the school with this teeter-totter, and the present chairman of the board had helped build it. However, it had not been kept in proper repair. The teeter-totter consisted of a trestle three feet eight inches high and a cross-board or plank sixteen feet long, twelve inches wide, and two and a half inches thick. Over the years, the plank on which the pupils would sit to teeter had worked loose, becoming entirely separated from the trestle by means of the connecting bolt having been removed. The trestle was in no way fastened to the ground. The pupils would teeter by placing the plank on the trestle at the balancing point. This allowed for a lateral movement of ten or twelve inches to the right and left of the pupils teetering on it (which was twice as great as it should be if the teeter-totter were in proper repair).

On the day in question, while the four boys were teetering, a girl's hat fell onto the ground near the feet of one of the boys. He told another boy that when his end of the plank came down he was going to pick up the hat and toss it in play. His end of the plank came down, and he pushed his left foot into the ground thereby swinging the plank to the right, thus enabling him to pick up the hat. Then, with his right foot, he pushed the plank to swing it back to its original position. During the course of the swing, Shultz and another boy lost their balance and started to fall off the teeter-totter. Although the other boy tried to save Schultz, he was too late, managing to save only himself from falling. Schultz fell off and broke his arm.

Issue(s). Whether or not the plaintiff's injury was the result of the alleged negligence of the school board in not keeping playground equipment (specifically, the "teeter-totter") in good repair.

Reasoning applied by the court. In ruling for the plaintiff, the Alberta Supreme Court stated: (pp. 582-583)

> - There was, however, faulty construction in the apparatus by reason of the fact that it was built so as to permit of too great a lateral movement which would tend to unseat its users. There was not that rigidity in construction which there should have been to make it safe for use by children, who are invited and indeed compelled to attend the defendant's school.

- The defendant was in control of the school and was by section 137 of **The School Act**, R.S.A., 1922, ch. 51, charged with the duty of keeping all the school property in order.
- I find that the chairman of the school board as well as the teacher knew of the non-repair of the thing in question and of its lack of safety for use of the children attending this school or, at least, by the younger pupils. Whether the board had knowledge of the non-repair or not it ought to have had that knowledge.
- ... the injury to the plaintiff was the result of the disrepair coupled with and aggravating the faulty construction which permitted an unsafe lateral movement which unseated the infant plaintiff and that its faulty construction and non-repair was due to the negligence of the defendant.

Ellis et al. v. Board of Trustees for Moose Jaw Public School District, [1946] 2 D.L.R. 697.

Facts of the case. On Monday, September 14, 1942, an eleven-year-old pupil in Grade 7 at Prince Arthur School in Moose Jaw, Saskatchewan, sustained personal injuries during the afternoon recess.

The Board of Trustees for the Moose Jaw Public School District had concluded an agreement with an independent contractor, Blondin Roofing Products Ltd., to repair the roof of the Prince Arthur School. Consequently, the contractor had erected a pulley arrangement for the purpose of hauling material to the roof. One part of this equipment consisted of a piece of timber about 7 feet long. One end of this timber was fastened to the roof, whereas the other end projected beyond the school wall and had a pulley attached with a rope passing through it. The pupils at the school were in the habit of swinging from this rope, even though their principal had warned them not to do so. The area was not under guard or supervision and was not enclosed to keep pupils away.

At the time of the accident several pupils were noisily swinging on the ropes. The infant plaintiff, though playing with a different group of boys, was attracted to their noise and went to see what was going on. As he stopped to watch them, he heard someone shout "Look out!" As he looked up, he was struck on the head and knocked unconscious by a piece of equipment from the pulley arrangement that had suddenly fallen from the roof. It was later learned that he had suffered severe injuries to his head and brain.

Issue(s). Whether or not the plaintiff's injury resulted from the alleged negligence of the school board in that it (1) failed to properly supervise the school grounds, and (2) failed to warn the infant plaintiff and other pupils to keep away from the equipment and not to interfere with it.

Reasoning applied by the court. The trial court ruled in favor of the plaintiff and on appeal to the Saskatchewan Court of Appeal, the appellate court affirmed the decision of the trial judge. In its concurrence with that decision, the appellate court stated: (pp. 704-707)

- ... in view of the duty of supervision which the law imposes upon school authorities more specific care is demanded of them than that which is ordinarily required from the occupier of premises in respect of invitees thereon.
- The evidence shows that before the accident the principal was aware of the presence and nature of the contractor's equipment in the back area of the school; that he became cognizant of the unusual enticement it offered the pupils to engage in play; and of the possible dangerous consequences of their doing so; that to guard them against such dangers he confined himself to the issue of oral warnings to them to avoid the area, although he knew that they had previously disregarded such warnings to such an extent that they had "frequently" had to be "cleared out" of the area.
- He [the principal] admits however that he did not send anyone outside on the grounds to make sure that these warnings were duly regarded.

- ... the Trustees were negligent because, to put it tersely, the supervision exercised by the principal as their representative was in regard to the infant plaintiff, as he ought to have anticipated, wholly inadequate to save him from such possible dangers.
- In this action the school board had at all times the responsibility of supervision and could not delegate that responsibility to a contractor, whether independent or not. The fact that repairs were being effected to the school buildings made that responsibility all the more imperative and weighty.

Adams v. Board of School Commissioners for Halifax, [1951] 2 D.L.R. 816.

Facts of the case. An accident occurred to an eight-year-old student on the grounds of Joseph Howe School in Halifax, Nova Scotia, on September 27, 1949.

The students at the school had just been released for recess and, as they proceeded to go outside to the schoolyard, a fight broke out between two brothers, which developed into two factions throwing stones at one another. The infant plaintiff, who claimed that he did not even see the stone-throwing fight, was merely an innocent bystander. However, a stone hit him on his right eye, cutting it severely and eventually resulting in the loss of that eye.

Miss Little, a teacher at the school, was the teacher responsible for supervision of the boys' yard during recess on the day in question, having been assigned this task by the school principal. When recess began, she proceeded to go outside with the students but was held up near the exit, at which point she encountered a dispute among some other boys. She stopped at the boys' vestibule which led to the outdoors and reprimanded the boys involved. Unfortunately, by the time she got outside, the stone-throwing fight was over and the infant plaintiff had sustained serious personal injury.

Issue(s). Whether or not the plaintiff's injury resulted from the alleged negligence of the school board in failing to supply sufficient supervision in the school yard.

Reasoning applied by the court. In finding for the plaintiff, the trial court concluded that there was a failure to supply sufficient supervision on the part of the school board. However, on appeal, the Nova Scotia Supreme Court ordered a new trial on the basis of the following arguments: (pp. 823-824)

- It does not appear from the findings of the jury whether they considered that the Board, apart altogether from its officials and employees, was negligent in not making by-laws providing for better supervision, or that the Supervisor was negligent in not giving orders for better supervision, or that the principal was negligent in not assigning more than one teacher to the boys' yard so as at least to increase the probability that one or more teachers would be in the boys' yard every minute of the recess, or that Miss Little was negligent in not proceeding immediately to the yard or getting someone else to do so.
- I may say at once that I do not think there was any evidence fit to go to the jury of negligence by the Board, apart from that of its employees, or by the Supervisor. The same observation applies to Miss Little. She was merely doing her duty by intervening in the trouble in the vestibule.

In an attempt to strengthen its argument, the Nova Scotia Supreme Court quoted the following statement made by Justice Hilbery in **Rawsthorne v. Ottley**, [1937] 3 All E.R. 902 at p. 905: (p. 824)

- In my view, it is not the law, and never has been the law, that a schoolmaster should keep boys under supervision during every moment of their school lives.

Brost v. Tilley School District, [1955] 3 D.L.R. 159.

Facts of the case. On the morning of September 15, 1952, six-year-old Ardith Brost was a pupil at Tilley School in Alberta. During recess she was swinging on a swing with another pupil, Sandra Konrad, who was standing up on the swing and "pumping," whereas Ardith was sitting on the swing seat. They were swinging quite high and Ardith, who was not holding on with her hands, became frightened. She asked Sandra to stop, but to no avail. Suddenly, Ardith slipped out of the swing, falling backwards to the ground and fracturing the femur of her left leg. There was no teacher present when the accident occurred. Nor was there, nor had there ever been, any supervision of the swings on the school grounds.

Issue(s). The issue has been stated explicitly by Clinton Ford J.A. as follows: "The question, therefore, of liability of those in charge here of the school pupils, finally resolves itself into (1) whether they were negligent in their duty to exercise the degree of care that the law requires of them in the use by the smaller pupils of the swings, and (2) whether it is a reasonable inference that the accident resulted from negligence." (p. 170)

Reasoning applied by the court. On appeal from the trial court (where the action was dismissed), the Alberta Supreme Court, Appellate Division, held that the principal and school board were liable. The appellate court stated: (pp.163-170)

- It is a fact that no teacher was present when the accident occurred.
- I think that the standard of care of a School Board towards its pupils is of a higher degree than that to an invitee.
- ... the facts of the present case indicate that there was no method or systematic plan of supervision, and what supervision there was does not indicate that the authorities or master (the superintendent) felt under any duty to exercise the care of a prudent parent in supervising the pupils in their use of the swings.

- The views expressed here are not entertained because a swing is inherently dangerous or an improper kind of equipment for school grounds, but it is potentially dangerous, as is an automobile, and the higher one swings, the greater the danger becomes, just as the greater the speed of an automobile the more the danger. And this danger is a foreseeable one. Because of this, instructions, at least to young pupils, on how to get on and off, and how to swing, should be given.
- ... the Board of Trustees and the principal of the school failed to exercise the degree of care to safeguard the small pupils of the school in the use of the swings that the law requires, and that what happened to the plaintiff, Ardith Brost, resulted therefrom. It was quite foreseeable that this or some accident would sooner or later happen.

Toronto Board of Education and Hunt v. Higgs et al., [1960] 22 D.L.R. (2d) 49.

Facts of the case. In the month of January, 1957, fifteen-year-old Higgs was a student at Maurice Cody School in Toronto. He had "made friends" with a fellow student named Taylor. They would have lunch together and "fall around all the time." Taylor was well-known for being a boy who played rough. On many occasions, he had been warned and disciplined with regard to his behavior.

During morning recess on the last day of January , Higgs was standing in the school yard near a large patch of ice, which they called the "pleasure rink," talking to some girls when Taylor suddenly came up behind him, lifted him off his feet and, after having carried him a distance of about 20 feet, dropped him on the ice. He then begin to kick snow in Higgs' face.

There were four teachers on supervision duty in the school yard during this recess break. They were positioned at the four corners. No one, however, saw the accident happen. Some pupils summoned one teacher, a Mr. Herlick, who acted quickly in running to Higgs' assistance. When he reached him, Higgs was still lying on the ice. The teacher got the impression that Higgs was hurt and so offered him assistance, but Higgs refused his help. Shortly thereafter, another teacher, a Mr.Hunt, appeared on the scene of the accident. The evidence is conflicting as to just how Higgs managed to get to his school. However, "when he got there he hung up his coat and hat, and although he was limping quite obviously and complaining Mr.Hunt ordered him into line and into class." Higgs walked into the classroom as ordered by the teacher. However, the teacher, on seeing that Higgs was in pain and disturbed when he reached the classroom, sent him to the school nurse. The nurse sent Higgs home in a taxi. Later, X-rays showed that the boy's original injury was a hip bone displacement. It had been aggravated by his being required to walk to class, resulting in his having to be hospitalized.

Issue(s). As outlined in the statement of claim, the issue was whether or not the injury sustained by the plaintiff resulted from the alleged negligence of the school board for: (a) failure to provide reasonable or adequate supervision during the recess period; (b) allowing and permitting rough play of such a nature or kind that they knew or ought to have known that it was likely to cause serious injury to pupils such as the plaintiff entrusted to their care; (c) failure to intervene when they saw or ought to have seen that the actions hereinbefore related were likely to cause serious injury to the plaintiff. (p. 53)

Reasoning applied by the court. On appeal from the Ontario Court of Appeal (where, in concurrence with the trial court, it was decided that the school failed to provide adequate supervision), the Supreme Court of Canada ruled that the school did provide adequate supervision and gave the following reasons for its reversal of the judgment of the two lower courts: (pp. 56-58)

> - On the face of it there does not appear to be anything unreasonable about the system [of supervision] which was employed, and although no evidence was called to show that it had proved satisfactory over the years there was, on the other hand, no evidence called to the contrary effect except the happening of this one incident, and ... it is not suggested that the duty of supervision should be measured or determined by the happening of an extraordinary accident.
>
> - Even if the failure [to properly supervise] as found by the jury had constituted a breach of duty, it has not been shown to be probable that the failure ... caused or contributed to the respondent's injury which was occasioned by the sudden and unheralded action of the boy Taylor.
>
> - It is true that the rough habits of Taylor made him a pupil to be watched, but with the greatest respect, the facts do not seem to me to make it probable that having additional teachers on duty would have resulted in his being seen and stopped before the damage was done, and the fact that the presence of a teacher within 30 or 40 feet at the time of the incident did not deter him strongly suggests that the presence of additional persons in authority would not have affected his conduct.

To strengthen its argument, the Supreme Court of Canada referred to a similar case, **Clark v. Monmouthshire County Council** (1954), 52 L.G.R. 246 at p. 250, whereby Morris L.J., speaking of supervisors in the playground, stated that "It is not shown that this accident might not have happened whether they had been there or not. It was the sort of accident which might have happened suddenly and unexpectedly and be all over before anyone could intervene."

Moffatt et al. v. Dufferin County Board of Education et al., [1973] 1 O.R. 351.

Facts of the case. Edward Robertson was a maintenance superintendent at Mono-Amaranth Elementary School and an employee of the Dufferin County Board of Education in Ontario on November 18, 1969. During morning recess on this date, he requested of Carrie Hughson, a teacher in this school, that two male pupils be sent to the school auditorium to assist him at a school job. The superintendent did not reveal to the teacher the nature of the job, nor did the teacher inquire as to its nature. She promptly called the boys from the boys' washroom to go and assist him. One of these boys was the infant plaintiff, thirteen-year-old Gary Edward Moffatt.

On arriving in the auditorium, the boys discovered that their assistance was needed to help the superintendent raise a piano to an upright position. It had been lying on its back so that repairs could be made to its casters. As they were raising the piano, the back casters began to roll, causing the piano to drop. Moffatt could not get his fingers out from under the piano and, consequently, the middle and right fingers of his left hand were crushed. This required surgery, which resulted in his losing the tips of these two fingers.

Issue(s). With regard to the teacher, the issue was whether or not "she was derelict in her duty to the infant plaintiff by reason of her directing or allowing him to assist the janitor without having satisfied herself that the boy would not thereby be exposed to danger." (p. 352)

Reasoning applied by the court. On appeal from the trial court, the Ontario Court of Appeal concurred with the finding of the trial court that there was no negligence which could support an action against the defendant teacher. In dismissing the action, the appellate court stated: (p 353)

- So far as the claim against the teacher, Hughson, is concerned, accepting that the standard of care required of a teacher to her pupil was that of a careful parent

> to his child, I do not consider that allowing a male pupil of the age and size of Moffatt to respond to the request of the maintenance superintendent for assistance without personally inquiring as to the purpose of the request and anticipating that the injury suffered might occur as a result thereof, amounted to breach of any duty owed by her to the infant plaintiff.

Magnusson et al. v. Board of the Nipawin School Unit No. 61 of Saskatchewan, [1975] 60 D.L.R. (3d) 572.

Facts of the case. Alex Wright Public School in Nipawin, Saskatchewan, came under the jurisdiction of the Board of the Nipawin School Unit No. 61. Adjoining the playground of this school, there were premises which were used as fair grounds. Although the Nipawin board was not the occupier of the fair grounds, there was no barrier, such as a fence, separating these premises from the school playground.

The fourteen-year-old infant plaintiff was a Grade 6 student at the Alex Wright Public School on June 4, 1970. During a recess period on this day, he and several other male students left the school playground and went to the adjoining fair grounds.

On the fair grounds, the boys discovered a wasps' nest and began throwing things at it. One boy picked up a piece of glass from a broken bottle and, just as he was throwing it in an underhand swing, the infant plaintiff (who was afraid of wasps) ran across his path in an attempt to get away from the wasps. Unfortunately, the piece of broken glass struck the infant plaintiff in the eye causing serious injury.

Issue(s). Whether or not the school board was negligent in that it allegedly failed to provide adequate supervision of the students during the recess period.

Reasoning applied by the court. On appeal from the trial court, the

Saskatchewan Court of Appeal concurred with the trial court and dismissed the claim of the infant plaintiff for damages. In dismissing the appeal, the appellate court stated: (p. 574)

> - I am prepared to concede to the appellant that if there was on the adjoining fair grounds something which was essentially dangerous in itself, the finding that there was adequate supervision [by the trial judge] could be seriously questioned. What is really involved here is a consideration of the danger presented by the presence of odd bits of glass.

In continuing its line of argument, the appellate court referred to the case of **Wray v. Essex County Council**, [1936] 3 All E.R. 97, where Lord Wright, M.R., stated at p. 102:

> - Things like a naked sword or a hatchet or a loaded gun or an explosive are clearly inherently dangerous - that is to say, they cannot be handled without a serious risk. On the other hand, you have things in ordinary use which are only what is called "potentially dangerous": that is to say, if there is negligence or if there is some mischance or misadventure then the thing may be a source of danger; but that source of danger is something which is not essential to their ordinary character; it merely depends on the concurrence of certain circumstances - in particular, generally, negligence on the part of someone.

In addition, the appellate court stated: (p. 574)

> - In my opinion the broken glass must be categorized as a thing potentially dangerous and not one inherently dangerous or essentially dangerous in itself.
>
> - It is not reasonable to expect that a careful parent would forbid or prevent a child of 14 years from visiting or frequenting a place such as the fair grounds merely because there might be broken glass of some sort in the area. It was not reasonable to foresee that there would be such an unfortunate combination of circumstances as there were here to bring about the injury.

Cropp v. Potashville School Unit No. 25, [1977] 6 W.W.R. 267.

Facts of the case. Potashville School Unit No. 25 had under its jurisdiction on October 1, 1971 two schools - namely, Queen Elizabeth and Parkside - which housed its high school population in Langenberg, Saskatchewan. David Cropp, the fourteen-year-old infant plaintiff, was a Grade 8 student who had classes in both of these schools on this date.

The school unit had provided a walkway between the two schools. A concrete walkway extended from Queen Elizabeth to the street. Students then used the town's concrete sidewalk until they reached the entry to Parkside, at which point they transferred to a temporary entry walkway to Parkside school. The latter walkway was 6 feet wide and 60-80 feet long, consisting of loose crushed rock cribbed in with 2 x 6 boards.

At 11:00 a.m. on the day in question, Cropp, wearing cowboy boots with 2 inch heels, proceeded to walk alone from Queen Elizabeth to Parkside. While walking on the unstable temporary entry walkway to Parkside, he began to slip on the loose crushed stones. In an attempt to regain his balance, he stepped sideways over the cribbing, only to strike the crib-board with his foot, which caused him to fall down and seriously injure his right hip.

Issue(s). Whether or not the injury suffered by the plaintiff resulted from the alleged negligence of the school board in maintaining the school walkway in an unstable condition.

Reasoning applied by the court. In ruling that the defendant school board was negligent, the Saskatchewan Court of Queen's Bench awarded the plaintiff $75,000 in damages. The court's verdict was based on the following arguments: (pp. 268-270)

- I am satisfied on the evidence that the surface of this walkway was not perfectly stable. ... In fact, the vice-chairman of the defendant school unit admitted on examination for discovery that, when he walked on it, his footing was not too secure because of the coarseness of the gravel....he admitted that several members of the defendant board were aware that this walkway was unsafe.
- ... it seems conclusive on the evidence that no one in charge of the schools sensed that the stone walkway

> represented any danger because no one issued a warning to the students to be careful in traversing the stone part of the walkway between the buildings. No signs were posted suggesting caution.
>
> - I adopt the principle ... that the duty of care the defendant owed to the plaintiff as a pupil was higher than that ordinarily owing by an invitor to an invitee.
> - ... the defendant did not exercise the standard of care required by law to prevent the fall the plaintiff took. In short, the defendant was negligent in maintaining the temporary stone walkway in the condition the plaintiff found it on October 1, 1971, and is liable in damages for the injuries suffered by the plaintiff. It was a hazardous walkway and the defendant knew it represented a danger to those who walked on it, but chose to do nothing about rectifying the situation.

Accidents During Lunch Hour

Boivin v. Glenavon School District, [1937] 2 W.W.R. 170.

Facts of the case. The nine-year-old infant plaintiff was a Grade IV student at a school that came under the jurisdiction of the Glenavon School District. The one-storey school that she attended had a basement under it and the basement contained two playrooms, one for the boys and the other for the girls. The school board had equipped these playrooms with horizontal wooden ladders attached to the ceiling in each room for the students to use for exercising and recreation. However, there were no mats or padding on the cement floor under the ladders, nor was there any supervision of the students using these ladders.

On December 13, 1934, the infant plaintiff, after having noon lunch at home, returned to her school shortly before 1 p.m. and went to the girl's playroom to swing on the ladder. The infant plaintiff planned to swing from rung to rung. She had swung on the ladder many times before, but had never gone beyond the third rung in one swing.

At the time of the accident, she had grabbed the first rung and was swinging her body when the assembly bell rang. Another girl was coming behind her and told her to hurry. On this occasion, because she was in a hurry and because she was swinging hard, she went beyond the third rung and tried to reach the fourth. However, it was too far off and she could not reach it. Losing her hold on the first rung, she fell a distance of 3 to 4 feet on the cement floor below, striking the floor on her left side and breaking her arm near the shoulder.

Issue(s). Whether or not the injury sustained by the plaintiff resulted from the alleged negligence of the defendant school board in "not providing mats or other contrivance and took no care whatsoever to protect children playing on the said ladder and swinging therefrom from injury in the event of their falling." (p. 171)

Reasoning applied by the court. The trial court found the school board liable on the grounds that (1) it did not supply mats or other contrivances under the ladders on the cement floor in case of accident, (2) it did not supervise the playrooms while the children were playing therein, and (3) it did not keep the ladders and other appliances in repair. However, on appeal to the Saskatchewan Court of Appeal, the appeal was allowed and the defendant school board was exonerated. The appellate court's reasoning in this matter was as follows: (pp. 175-176)

- ... it seems to me that, having provided playrooms and equipped them with horizontal ladders for the recreation of the pupils including the infant plaintiff, it was the defendant's duty to make and keep these premises reasonably safe for their use.
- ... though the ladders had been almost continually in use for more than 12 years only two accidents had been reported to the defendant prior to this one. Moreover, these were inconsequential and it does not appear to have been suggested that either of them could have been prevented by having mats on the floor.

> - But apart from all this the evidence to my mind is not sufficiently certain to warrant the conclusion that the absence of mats or pads caused the infant plaintiff's injury. From the force with which she was swinging and the way and the distance she fell on her side, it would look to me as likely that she would have broken her arm anyway. In any event, that conclusion seems to me just as probable on the evidence as the conclusion that she suffered the fracture because there were no mats. Under such circumstances the defendant must be exonerated.

Gray et al. v. McGonegal and Trustees of Leeds and Lansdowne Front Township school Area, [1949] 4 D.L.R. 344.

Facts of the case. It was the custom in the "Legges' School," a public school in Ontario operated by the Leeds and Lansdowne Front Township School Area, to serve hot soup to the pupils (many of whom brought lunches to school) in the cold weather. This custom was carried on by the teacher, Hazel McGonegal, with the knowledge and approval of the trustees.

On June 12, 1949, Mrs. McGonegal, seeing that it was late in the school year and that her soup supplies were still in abundance, decided to heat them up and distribute them among the pupils.

It was also the custom to heat the soup on the wood stove, which was used to heat the school. Charles Gray, a twelve-year-old pupil at the school and the son of the school caretaker, was ordinarily the one who prepared and lit the stove. So, on the day in question, Mrs. McGonegal asked Charles to light the wood stove, but he demurred (apparently because it was too hot and also because there was no kindling available). The teacher then suggested that he light the gasoline stove, gave him some gasoline and three matches, and told him to take it outside in the schoolyard and light it, even though Gray claimed that he did not know how to light it.

Mrs. McGonegal watched Gray fail in his first attempt to light the stove. Then she went back inside the school. Apparently, Gray had splashed gasoline into the priming-cup without turning the stove on and then attempted to light it. Before he had used up all three matches, the gasoline, or the vapour, ignited as one match was being lit, catching fire to the cotton trousers he was wearing. As a result, Gary was painfully burned, from the groin to the ankle, and permanently injured.

Issue(s). Whether or not the plaintiff's injury resulted from the alleged negligence of the teacher in that she failed in her duty toward the infant plaintiff by allowing him to experiment alone with gasoline and matches.

Reasoning applied by the court. In judgment for plaintiff, the trial court stated: (pp. 347-350)

- The duty of a schoolmaster or mistress toward his or her pupils has been discussed many times ..."that the schoolmaster was bound to take such care of his boys as a careful father would take of his boys, and there could not be a better definition of the duty of a schoolmaster." (**Williams v. Eady** [1893] 10 T.L.R. 41 at p. 42)
- It would appear to me that the defendant McGonegal completely failed in showing any sense of responsibility toward the infant plaintiff; that she allowed him to play and experiment with a very dangerous and explosive substance, with matches; that she did not in any way exercise the control and care which any parent would be expected to exercise toward a child under similar circumstances, and that she completely failed in her duty towards this pupil.
- While I think it is quite clear that the providing of the hot meals for children is not part of the statutory duties of the teacher towards the pupils, it is nevertheless something which was done under the directions and approval of her employers, the trustees, and was within the ambit of her employment by them... she was a properly employed teacher of the school at the time the accident occurred... under these circumstances, the defendent trustees must also be held liable to the plaintiff.

On appeal, the decision of the trial court was affirmed by the Ontario Court of Appeal ([1950] 4 D.L.R. 395) and later by the Supreme Court of Canada ([1952] 2 D.L.R. 161).

Lamarche et al. v. The Board of Trustees of the Roman Catholic Separate Schools for the Village of L'Orignal, [1956] O.W.N. 686.

Facts of the case. On September 28, 1953, a Grade 5 pupil at St. Jean Baptiste School in the village of L'Original, Ontario, sustained serious injuries when the swing he was swinging on tipped over.

St. Jean Baptiste School was built on three or four acres of land and occupied only a very small part of this land. The remainder was used as a playground for the pupils from grades 1 to 8. The swing in question was installed on this playground by the school janitor, Philippe Parisien. However, he had placed it on sloping ground, which contributed to the swing's being liable to tip over. In fact, it had already tipped over more than once before this date.

At the time of the accident, which was 12:50 p.m. during lunch hour, the infant plaintiff and some other boys were swinging, while two other boys stood on the crossbars to hold the swing steady. The other boys got off the crossbars, and it was then that the swing tipped over, resulting in the infant plaintiff being partially paralyzed and mentally impaired.

Issue(s). Whether or not the injury sustained by the infant plaintiff resulted from the alleged negligence of the school board in failing to properly install a swing on the school playground.

Reasoning applied by the court. The trial court ruled in favor of the plaintiff and awarded him $40,000 in damages, along with out-of-pocket expenses which amounted to $6,097.85. In arriving at this decision, the trial court reasoned as follows: (pp. 687-689)

- With the large playground from which to choose a location for this swing, one cannot help wondering why it was placed on the slope.
- ... it seems to me that any adult should have realized that the swing was liable to tip over when children were swinging on it.

- There is no evidence to indicate that the infant plaintiff did anything more than swing on the swing. That is what the swing was for. There is no evidence that the infant plaintiff, or anyone else, for that matter, interfered with the manner in which the swing had been placed, or with any parts of or supports for the swing.

- Where the swing required the presence of one or more schoolboys standing on the crossbar to steady it while others were swinging on it, even if they were swinging quite high, it could hardly be said, in my opinion, that the swing was in safe condition for ordinary use.

- ... in my opinion the defendant has not established any negligence on the part of the infant plaintiff.

- The accident occurred at 12:50 p.m., when, in fact, there was a supervisor in part of the school-yard supervising the activities of some of the children. I am of the opinion that at the time of the accident there was a duty to provide supervision, but the cause of the accident can hardly be said to be lack of supervision. It was really the faulty manner in which the swing was installed on a slope.

- It should be remembered that school-children are not merely permitted, or invited, to come to school, but are required to do so, and, as members of the public, if they are injured by neglect of a statutory duty with regard to a place where they are expected to play, they are entitled to make those upon whom the statute has imposed the duty, responsible for injuries sustained by them through breach of such duty.

- The duty of the board of trustees, under the circumstances, is to see that the premises provided for the accommodation of the school-children are as safe as reasonable care and skill can make them. The swing on which the infant plaintiff was injured was obviously dangerous in a school playground while it was located on a slope where it was likely to tip over.

- I find that the defendant was negligent in allowing the infant plaintiff to use the swing while it was defectively installed.

Dyer et al. v. Board of School Commissioners of Halifax, [1956] 2 D.L.R. (2d) 394.

Facts of the case. On September 14, 1954, eleven-year-old Hugh Dyer and his friend, Bernard Hudson, were throwing acorns in the yard of St.

Francis School in Halifax a few minutes before and after 1:50 p.m. The bell to call students to line up for afternoon classes rang at 1:55 p.m., and supervision of the yard officially began at 1:50 p.m. Of the teachers on supervision duty on this occasion, two had arrived before 1:45 p.m. and one at 1:50 p.m. But all three failed to see and stop the acorn-throwing incident.

Dyer (who had arrived at the school with about 4 dozen acorns in his pockets) and Hudson were throwing acorns to and from the platform outside the gymnasium door. They tossed acorns down to a group of 12 or 15 boys, and then some of these acorns were thrown back up, overhandedly, to the platform. After a few minutes of this, Hudson left the platform, but Dyer continued until he had got rid of his supply of acorns and those he had received from being thrown up. Then he bent down to tie his shoe lace. As he was raising himself erect, he was hit in the eye by an acorn that was being thrown back up by one of the boys below. As a result, the infant plaintiff totally lost the use of that eye.

Issue(s). Whether or not the injury sustained by the infant plaintiff resulted from the alleged negligence of the defendant school board in that: "(1) the system provided in its regulations was inadequate in failing to provide supervision for pupils known to be likely to arrive before 1:50 p.m., and in failing to provide a sufficient number of teachers on yard-duty; (2) the administrative officers of the school negligently failed to instruct pupils in general and Hugh Dyer in particular that they should not arrive before 1:50 p.m. when supervision officially began, and as to their manner of play in the yard; and, (3) there was negligence (in the course of their employment) on the part of the teachers on yard-duty in not anticipating, detecting and aborting the throwing of acorns by pupils, and thus preventing the injury in question."(p. 400)

Reasoning applied by the court. In dismissing the action against the defendant school board, the Nova Scotia Supreme Court stated: (pp. 399-401)

- The standard of care which a school authority is bound by law to exercise in respect of pupils has often been stated as that which "a careful parent", or "a reasonably careful parent" would exercise in like circumstances.

- I find that the regulations did provide for a reasonably adequate system of supervision in general; and in particular, that four teachers constituted a sufficient number to supervise the pupils in the yard under the reasonably foreseeable circumstances.

- The failure to provide teacher supervision before 1:50 p.m. in the face of knowledge that students did begin arriving ten minutes or so before that time has given me some pause; but it does not in itself constitute a breach of the legal standard. Moreover, there is no reason to suppose that this played any casual part in the accident; ... Besides, there is evidence that the principal had advised pupils not to come before the period of supervision as well as warning against the throwing of hard objects.

- I cannot find that the teachers were negligent in the relevant sense in failing to see and stop the acorn-throwing activities of a handful of boys in the short period of their occurrence. In the result I find that there was no breach of duty by the defendant, or its servants acting in the course of their employment, which caused the damage claimed.

Schade et al. v. School District of Winnipeg No. 1 and Ducharme, [1959] 19 D.L.R. (2d) 299.

Facts of the case. On June 21, 1957, Ronald Schade was thirteen years of age and a pupil at a school under the care and control of the School District of Winnipeg No. 1 in Manitoba.

Shortly before this date, a contractor, hired by the school board, had commenced building an addition to the school. A large part of the necessary excavation had been completed by this date, and the contractors had erected a fence around part of it. About 30 feet to the east of the excavation, the contractor had driven three stakes into the ground. They were 2"x 4" scantlings, protruding 16" from the ground, each twelve feet from the others. These stakes were to be used as markers for the construction work. The students at the school had been repeatedly warned by the principal, at the regular morning assemblies, to stay away from that part of the school playground that contained the construction site.

Around 12:30 p.m. on this bright, sunny day, the infant plaintiff, Shade, joined some other boys in a game of "scrub baseball" on the school grounds. In disregard of the principal's warnings, the infant plaintiff voluntarily stationed himself as an outfielder in the forbidden construction area, close to the excavation and stakes. The batter hit the ball south of where Shade was standing and, in an effort to retrieve it, Shade ran heedless of where he was going, with his eye on the ball, and tripped over one of the stakes. He suffered a severe fracture of his right elbow.

Issue(s). Whether or not the injury sustained by the infant plaintiff resulted from the alleged negligence of the school board and the contractor in not warning the infant plaintiff of the potential danger of the stakes protruding out of the school ground during the period of school construction.

Reasoning applied by the court. On appeal from the trial court, the Manitoba Court of Appeal concurred with the judgment of the trial court in dismissing the action against the school board and the contractor. In exculpating the school board and the contractor, the appellate court stated: (pp. 301-305)

- ... the principal, Mr. Donald, at regular morning assemblies of the whole school, on several occasions before the work was commenced warned the pupils of the contemplated construction and told them they were to keep away from that part of the playground on which the contractor would be working.

- I think the decisive factor in this case is that the preponderance of evidence indicates the infant plaintiff knew before the accident occurred that there were marker stakes in the area in which he voluntarily stationed himself to play baseball.

- ... such stakes were clearly visible, and the learned trial Judge found that the infant plaintiff did see them prior to the accident.

- The infant plaintiff admits that he voluntarily stationed himself in an area in which he knew construction was being carried on.

- ... the infant plaintiff was obviously in a position where any attempt to field a ball hit in his direction would be fraught with considerable danger and require caution on his part. With the marker stakes added as a further hazard - a hazard of which he had knowledge - the plaintiff admits that he ran after the ball hit in his direction without looking where he was running. This was negligence on his part.

- There is a responsibility on every person, infant or adult, to exercise some degree of care for his or her safety.

- While it must be recognized there is a duty on teachers to supervise certain school activities, a duty that of necessity bears some relation to the age of the pupils, the special circumstances of each case and, in particular, the type of activity engaged in, nevertheless it must also be recognized that one of the most important aims of education is to develop a sense of responsibility on the part of pupils, personal responsibility for their individual actions, and a realization of the personal consequences of such actions.

- In the instant case the accident was caused by the infant plaintiff's own negligence under circumstances which placed a responsibility on him to have regard to his safety. Bearing in mind his age, his intelligence and his knowledge of the circumstances, he failed to take the necessary care. That is the decisive fact which determines the result of this case and makes it impossible for the plaintiff to succeed against either of the defendants.

Portelance et al. v. Board of Trustees of Roman Catholic Separate School for School Section No. 5 in Township of Grantham, [1962] O.R. 365.

Facts of the case. Jacques Portelance and Joseph Milkovitch, two twelve-year-old students at St. Christopher's School on the outskirts of St. Catharines, Ontario, sustained injuries while playing a game of tag, in a dense bush area immediately adjacent to the school playground, during lunch hour on December 4, 1958.

The tangled bush area, owned by the board of trustees, contained some hawthorn trees with sharp thorny branchlets. A wide path had been made through this area to accommodate students who wished to approach the school via this direction.

Both of the infant plaintiffs were quite familiar with the bush area in question, having played there before on numerous occasions, even though they had been warned not to by their teachers due to the fact that it was a "dirty, muddy area." One of these teachers was on noon-hour supervision duty at the time of the accident.

The two infant plaintiffs were injured in the same way and within five minutes of each other. While the boys were playing tag, they each chased another boy into or near the dense bush area. As the boy being pursued ran into the bush, he brushed aside a branch of the hawthorn tree with his shoulder, which branch sprang back and hit the plaintiff in the left eye, perforating the cornea. Consequently, each of the two boys suffered a total loss of vision in the left eye.

Issue(s). Whether or not the injury sustained by the infant plaintiff resulted from the alleged negligence of the school board in "failing to maintain the school premises in a proper condition, thereby exposing the pupils to unnecessary danger while playing there, and failing to provide adequate supervision over their activities while in attendance at school." (p. 367)

Reasoning applied by the court. The trial court found the school board liable. However, on appeal to the Ontario Court of Appeal, the appeal was allowed and the action against the school board was dismissed. In reversing the decision of the trial court the appellate court stated: (pp. 370-375)

- A full and ample measure of justice will be done to children enrolled in our public or separate schools if they are accorded the measure of the law enjoyed by invitees who enter premises as of right, and, as I see it, that is their true status.

- An unusual danger has been held to mean one which is unusual from the point of view of the particular invitee: (**per** Phillimore, L.J., with whom Pickford, L.J., agreed in **Norman v. Gt. Western R. Co.,** [1915] 1 K.B. 584 at p. 596.)

- A careful consideration of the evidence fails to convince me that this bushy section, nothwithstanding the presence of hawthorn trees with pointed thorny branches, constituted an unusual danger from the standpoint of the two plaintiffs. They were both thoroughly familiar with the premises... It should have been perfectly obvious to boys of their age and experience that if they ran heedlessly through such a thicket they might sustain an injury of some kind.

- I am not prepared to hold that the coppice in question presented an unusual danger to the plaintiffs. Nor am I persuaded that if the measure of duty owing to the plaintiffs should be higher than the duty owing to invitees, the school authorities or the teachers should have anticipated danger to the pupils if they played in that vicinity. Even if a higher measure of duty were to be applied their failure to remove the bush or to erect a fence around it did not, in my opinion, constitute a breach of duty which would support the plaintiffs' cause of action.

- ... there was nothing to suggest to the supervising teacher that she ought to anticipate the risk of injury to any of these boys. The unfortunate occurrences were the purest misadventure, and of such an extraordinary and exceptional character that they could not reasonably have been foreseen by anyone.

- It is not the duty of teachers to keep pupils under supervision during every moment of their attendance at school.

- ... in my view the degree of supervision provided in the particular circumstances did not fall below a reasonable and acceptable standard.

- Applying the careful parent test to the present case I am wholly unconvinced that a reasonable and prudent parent would have considered it his duty to have ordered these boys to desist from participating in the game of Blacksmith at the time and place in question.

Robinson v. Board of Trustees of Calgary School District No. 19 and Franklin, [1977] 5 A.R. 430.

Facts of the case. Daniel Robinson, a fourteen-year-old special education student at Victoria Elementary Junior School in Alberta, was in the habit of sliding down the banister of the stairway in his school almost every day. He was a discipline problem for the school and had been told by his teacher, Mrs. McCauley, on a couple of occasions, as well as by another teacher, Mr. Henry, not to slide on the banisters. Besides, the students at the school had been warned repeatedly about this by their principal, Mr. Franklin.

During the noon lunch on February 2, 1972, Robinson slid down the banister again, brushed past a student, and then tried to grab hold of the banister but missed it and fell to the basement floor. As a result, he sustained injuries to his spleen, requiring removal, and suffered a torn liver, bruised kidney, collapsed lung, as well as a fracture of the ilium.

Issue(s). Whether or not the injuries sustained by the infant plaintiff resulted from the alleged negligence of the school board "in not taking steps to protect Robinson from the danger which the plaintiffs say existed in the stairwell in the school in February, 1972." (p. 431)

Reasoning applied by the court. The Alberta Supreme Court, Trial Division, held that the school board was not liable for damages for the plaintiff's injuries. In dismissing the plaintiff's action, the trial court stated: (pp. 433-434)

- I think in applying the principles set forth by Lord

> Esher in the **Williams** case a normal father or an ordinary father would certainly allow a fourteen-yeay-old boy to walk down the stairwell in a school or in a building unsupervised and therefore I think that certainly the school authorities should be in no different position.

- ... the teachers apparently had warned Daniel Robinson not to slide down the banister. They cannot provide a minute to minute or second by second supervision of Daniel Robinson or any student.
- On the whole of the evidence the plaintiffs have not, in my view, satisfied me that the defendants were negligent and accordingly this action is dismissed.

Accidents After School Hours

Edmondson v. Board of Trustees for the Moose Jaw School District No. 1, [1920] 55 D.L.R. 563.

Facts of the case. On September 11, 1919, the infant plaintiff was an eight-year-old student at the Empress School in Moose Jaw, Saskatchewan. He was too young to participate in the after school high jumping that some other boys were practicing in anticipation of a field day soon to take place. But, on this day, just after school was dismissed, the infant plaintiff went outside on the school grounds to watch the boys practice the high jump. Although he was not participating, his older brother was.

In the high jump, the boys were using a bamboo pole for a crossbar. It had sharp points at the small end due to its having been broken. The infant plaintiff stood watching the boys practice. Shortly before his accident, one of the boys told him to move back. This he did, stepping back about 4 or 5 feet. Then, his brother commenced jumping. As he took a high jump, he struck the bar and knocked it off. The small end with the sharp point hit the infant plaintiff in the eye, cutting it and destroying his sight in that eye. He had lost his other eye previously.

Issue(s). Whether or not the injury sustained by the infant plaintiff resulted from the alleged negligence of the defendant school board "in permitting the use as a crossbar of a bamboo pole with the small end thereof in a splintered or pointed condition." (p. 566)

Reasoning applied by the court. The trial court ruled that the school board was negligent and awarded the infant plaintiff $7,200 in damages. On appeal, the Saskatchewan Court of Appeal reversed the decision of the trial court on the basis of the following arguments: (pp. 563-573)

- There was nothing unusual or out of the ordinary in the apparatus in question, and it was being used in the ordinary way. That the pole should be knocked down is an ordinary incident of any jumping competition, and under ordinary circumstances there is no resulting danger. The accident which unfortunately happened might equally well have happened whether the end of the pole was broken or not.

- This pole could not be considered a trap, as it was not dangerous to anyone using it. It was no more dangerous to spectators than any other instruments used in sports striking a spectator " on the spot."

- The accident took place about 5 minutes after 4 o'clock in the afternoon. The school was dismissed at 4 o'clock.

- I have come to the conclusion that the appellant owed no duty to the infant respondent which rendered the appellant liable for the particular accident which took place.

- ... the infant respondent had no right to be where he was at the time of the accident. It was out of school hours; his duty was to go home. This apparatus could not in any way, in my opinion, be held to be a trap.

Pearson v. The Board of School Trustees of Vancouver et al. (1941), 58 B.C.R. 157.

Facts of the case. On the 26th of March, 1941, Edward Pearson was seven years of age and a student at Sir Richard McBride School in Vancouver. After school was dismissed on that day, some students took turns riding a bicycle around and just outside of the school grounds. One of these students had loaned her bicycle to another girl who, after having ridden it for a short time, loaned it to another girl, Joyce Fisher, who was eleven years of age.

About 3:35 p.m., Fisher was riding the bicycle on the sidewalk of a boulevard adjoining the school grounds. As she very slowly proceeded toward the exit to the school grounds, Pearson (who had been standing at the top of the school steps) suddenly rushed down the steps, across the school grounds, and on to the boulevard in response to a call from another boy. Although he paused briefly upon reaching the boulevard, he nevertheless hurried into the path of the oncoming bicycle. Fisher collided with him and knocked him down. The bicycle fell on top of him, and he sustained injuries. The accident occurred about 9 feet away from the school grounds.

Issue(s). Whether or not the injuries sustained by the infant plaintiff resulted from the alleged negligence of the school board in not supervising the area around the school premises.

Reasoning applied by the court. The British Columbia Supreme Court ruled that the defendant school board could not be held liable for the plaintiff's injuries, for the following reasons: (pp. 159-160)

- On the merits of the case I am unable to find any negligence on the part of the defendant Joyce Fisher. The day was a normal one. Pupils were leaving school in the usual way and in the usual numbers. The usual and sufficient measures of supervision and inspection of buildings and grounds were carried out. The riding of a bicycle immediately outside school grounds is not by any means out of the way. There was nothing untoward until the accident happened. And in my opinion it happened because the infant plaintiff was not keeping a proper look-out.

> - ... even if the defendant Joyce Fisher had been negligent there would not in my opinion have been any liability on the part of the School Board. There is not around school grounds a zone over which the school authorities exercise supervision as, for example, do the authorities of a State over its territorial waters. School supervision does not extend beyond the school premises.

Durham et al. v. Public School Board of Township School Area of North Oxford, [1960] 23 D.L.R. (2d) 711.

Facts of the case. Ten-year-old Frank Durham, "of a mental age several years below that of his actual age," was a pupil at Dickson's Corners School in Ontario when he sustained injuries while playing on the school grounds on June 6, 1958.

Prior to the day of the accident, the pupils, including the infant plaintiff, had helped their teachers clean up the school grounds in observance of Arbor Day. They picked up pieces of wire, glass, paper, and rubbish of various kinds, and deposited them in a pile on the school ground. They burned the pile of paper, but the other accumulated materials were not removed.

Although it was customary for Frank's class at the school to be dismissed at 3 o'clock, classes continued for the senior grades until 4 o'clock. Besides, it was not until shortly after 4 o'clock that Frank's father would pass by the school in car. Therefore, Frank and his younger brother would wait and play on the school grounds for the extra hour, until their father came to drive them to their home, which was about two miles away.

On the day in question, while playing on the school premises shortly after 3 o'clock , Frank picked up a piece of wire from the school ground, then proceeded to a cement block which also lay on the school ground, and sat down on the block to play with the wire. The nature of this wire was such that the metal of which it was made possessed a quality of springiness or elasticity. As Frank was bending this wire, it "flew" or sprang back and hit him in the eye. His eye was severely injured and, as a consequence, became badly infected, which later resulted in a surgeon's having to remove the colored portion of the eye.

Issue(s). The issue arises from the allegation that the school board and its servants were negligent in that they "failed in their duty to maintain the school premises in a tidy condition; that the presence upon the grounds of pieces of wire and glass constituted a danger to children of elementary school age, making available to the infant plaintiff the piece of wire in question, an object having dangerous potentialities, and that the defendant was therefore liable to the plaintiff for the injury to his eye caused when he was attempting to bend the wire." (p. 715)

Reasoning applied by the court. The trial court found the defendant school board liable. However, on appeal, the Ontario Court of Appeal ruled that the school board was not liable for the following reasons: (pp. 716-721)

- It has not been demonstrated that the presence of debris, which included pieces of wire, had any proximate causal connection with the infant plaintiff's injury.
- It has not been proven that the wire which did the damage originated in the pile of debris referred to in the evidence of the boy Kerr and of the infant plaintiff.
- Quite apart from the question as to whether the wire which caused the injury to the infant plaintiff came from the pile of debris mentioned by the witnesses, the crucial issue in the case at bar is whether or not it is a thing dangerous in itself, i.e., inherently dangerous.
- Upon consideration, I am unable to avoid the conclusion that the piece of wire in question was not a dangerous thing in itself. It was only potentially dangerous in the same way as a knitting needle, a nail, a pen with a sharp nib, a pointed pencil, a scoring knife, or many objects in daily domestic use could be characterized as dangerous. The unfortunate occurrence which resulted in the loss of this unhappy boy's eye was the purest misadventure, an occurrence of such rarity, and so extraordinary and exceptional, that it could not reasonably have been foreseen by anybody.

- I am bound to hold that there is nothing that the defendant or its servants could or ought to have foreseen, and that they therefore committed no breach of duty towards the plaintiff.
- I entertain no doubt whatever that a reasonable and prudent parent, seeing a 8 or 10-year-old boy playing with a piece of wire such as this, would not have considered it his duty to remove it from his reach. To hold the School Board liable on the facts of the present case would be to make it and its servants practically insurers of their pupils' safety.

Boryszko et al. v. Board of Education of City of Toronto and Bennett-Pratt Ltd., [1963] 35 D.L.R. (2d) 529.

Facts of the case. Eight-year-old Peter Boryszko sustained personal injuries on May 7, 1959, while playing in his school yard, which was about a block and a half away from his home.

Bennett-Pratt Ltd., a construction company, had entered into a contract with the Board of Education of the City of Toronto to renovate the interior of the McMurrich Public School building. This work entailed using "slag blocks" or large, heavy building blocks to form new interior partitions. The company superintendent had gained the express permission of the school principal to stack a pile of these building blocks in the school yard about two feet away from the school wall.

The pupils of McMurrich Public School had been warned by the principal and teachers not to play near the pile of slag blocks, as it could be dangerous. As well, the company had employed a watchman, who had been on duty on the evening in question. On several occasions previous to this date, this watchman had driven some children away from this prohibited area. The infant plaintiff had knowledge of this.

After supper (or between 5 and 6 p.m.) on the evening in question, Peter Boryszko was told by his mother to go outside and play. She requested that he go to the school yard. This he did, taking along a nine-year-old friend. On arrival, they began to play a game of "Cowboys and Indians." Although they were the only two engaged in this game, some other boys were playing baseball in the school yard. During the course of play in the game of "Cowboys and Indians," Peter hid for awhile in the space between the school wall and the pile of slag blocks. A little while later, a rolling baseball was batted toward him and the pile of slag blocks; and, Peter, in an attempt to retrieve it, ran very close to this wall. As he leaned forward to pick up the baseball, he was struck by a falling slag block. At the time of the accident, an unknown older boy had been sitting on top of the pile of slag blocks; and, as he attempted to make an elevated seat for himself, he dislodged some of the blocks. One of the blocks fell and fractured the foot of the infant plaintiff.

Issue(s). Whether or not the injury sustained by the infant plaintiff resulted from the alleged negligence of the school board in that it ought to have reasonably foreseen the occurrence and therefore was bound by a duty to have taken the proper precautions to guard against the event.

Reasoning applied by the court. The trial court ruled in favor of the infant plaintiff. However, on appeal to the Ontario Court of Appeal, the appellate court reversed the decision of the trial court on the basis of the following arguments: (p. 531)

- ... the infant plaintiff was a licensee at the material time.
- Counsel for the respondents... contends that the unknown boy who was seated at the top of the pile dislodging the blocks for his own purposes was doing something which ought to have been anticipated by the defendants, and that they should have taken precautions to guard against the event which happened either by fencing the area or by placing the blocks in a lower pile.

- We are not prepared to say that the defendants ought reasonably to have foreseen this occurrence. There is no evidence that such conduct had occurred previously. Moreover the plaintiff, on his own admission, had been warned by the principal and by his teacher to remain away from this area. He could see the unidentified boy seated on top of the pile engaged in the act of dislodging some of the blocks and the danger of a block falling during this process, having particular regard tc the warnings which had been given to him, was an open and obvious one.

- The defendants as occupiers of the land are only liable to the infant plaintiff as a licensee if they suffer anything to be on the premises which is in the nature of a concealed danger or a trap. The conduct of the unidentified boy does not, in our opinion, have thc effect sought to be attributed to it so as to convert the pile of blocks into a trap in any sense of that term. To give effect to this contention would be to make the defendants practically insurers of the infant's safety.

Storms v. School District of Winnipeg No. 1, [1963] 41 D.L.R. (2d) 216.

Facts of the case. Roger Storms, a bright and intelligent lad of eleven years of age, on July 2, 1959, suffered injuries when he was hit on the head by a descending fire escape attached to the George V School in Winnipeg, Manitoba.

The principal of George V School had warned his pupils to stay away from the school fire escapes while playing; and, on numerous occasions, warnings were also provided through the medium of school board bulletins. In addition, not only were the pupils warned, but the principal had also punished some pupils for their disobeying such warnings.

The accident in question occurred during the summer holidays. The fire escapes were in operation during this time because it was a requirement of the fire regulations, since various persons (including caretakers, the school nurse, the school secretary, etc.) were using the school premises. No attempt was made, however, to prevent children from using the school grounds, even though there was no supervision of the grounds during the holidays.

About 7:30 p.m. on the day in question, Roger Storms and two older companions decided to go to the park to play. The grounds of this park were adjoining the grounds of the George V School. Although it was not necessary to pass through the school grounds to get to the park, it was a short cut. Hence, the boys decided to take this route. En route, they would have to pass by the fire escapes attached to the school. These were of the iron-step variety and were about 15 feet 4 inches long and 2 feet 6 inches wide, and held in position about 10 feet above the ground. Weight on the fire escape ladder would lower it to the ground and, when the weight was removed, a counter weight would draw the escape ladder up into place.

When the three boys arrived near the fire escape in question, they saw some younger boys playing on it and "thought it would be fun." Hence, they went over to it. Roger's two companions climbed up the escape, and Roger watched them climb up. However, he did not go up. Instead,he stayed on the ground near the lower step of the ladder and conversed with some of the younger boys. Even though Roger had not been a pupil at this school during the previous term, he was well aware of the prohibition against playing on the fire escape. His knowing that he shouldn't play on this one caused him to refrain from doing so.

During their course of play, Roger's two companions alternately raised and lowered the fire escape to the ground. Roger remained on the ground talking to the younger boys. On one occasion, as his friend, Townley, was lowering the fire escape near him, Roger noticed an object on the ground underneath the escape, and so he went over to pick it up. As he was bending down to do so, he heard the escape ladder coming down. But he was unable to get out of the way in time, especially in view of the fact that he was exceptionally tall, about 5 feet 6 inches at the time. As a result, Roger was struck on the head by the descending fire escape.

Issue(s). Whether or not the plaintiff's injury resulted from the alleged negligence of the school board in having on its premises a fire escape which was alleged to be inherently dangerous.

Reasoning applied by the court. The trial court dismissed the action against the school board on the basis of the following reasons: (pp. 221-224)

- I hold that the infant plaintiff and his two companions were bare licensees in so far as the school playground was concerned, but were trespassers as to the fire escape.
- The accident was not caused by reason of any inherent danger of the escape. It was caused by the unauthorized use made of it by Townley to the plaintiff's knowledge, combined with his own separate negligence and deliberate act.
- ... I hold that the infant plaintiff did not exercise the care to be expected of a child of his age, intelligence and experience, and that he had full knowledge of the nature and extent of the risk which he ran when he deliberately went underneath the fire escape at the point he did and at the time when his companion was bouncing it up and down somewhat in the nature of a teeter-totter, and, therefore, was the author of his own misfortune. He could, by the exercise of ordinary care, have avoided the accident, and his negligence was the real direct and effective cause of the misfortune.

Sombach et al. v. Trustees of Regina Roman Catholic Separate High School District of Saskatchewan, [1969] 72 W.W.R. 92.

Facts of the case. Miller Composite High School, built and completed in 1967, came under the care and control of the Trustees of Regina Roman Catholic Separate High School District of Saskatchewan. Its main entrance contained two sets of doors separated by fixed glass panels. All of the panels, with the exception of one, had a diamond design sandblasted on the glass to distinquish them from the clear glass doors. Both the panels and the doors were of approximately the same width. It was through this panel that was not sandblasted that fourteen-year-old Karen, a student at the school, stepped, on October 17, 1968, mistaking it for an open door and, consequently, suffering injuries. Another pupil had "walked through" this same panel in September, 1967.

Karen was a member of the school volleyball team and her team was to play a game after classes at another school on the day in question. When Karen arrived to meet the other members of the team in the gym, she found that they had already left. However, she saw her teacher through the front doors of the school, standing besides a taxi, which contained some other members of her team. She went out through a door which had been "propped open" to call to her teacher and explain why she was late. The teacher, Miss Chatto, told her to get her uniform and hurry up if she wanted a ride. As Karen turned to go back into the school to get her uniform, she crashed through the panel that was not sandblasted, believing it to be the open door that she had just come out through, but which was just east of the panel. As a result, she suffered four lacerations of her left leg, and two small ones on her right leg.

Issue(s). Whether or not the injuries sustained by the infant plaintiff resulted from the alleged negligence of the school board in "failing to maintain the said entrance in a proper and safe condition inasmuch as it was so constructed that the plate glass panel was nearly indistinguishable from the adjacent glass doors constituting a hazard to users thereof including the infant plaintiff." (p. 95)

Reasoning applied by the court. The trial court ruled in favor of the plaintiff on the basis of the following reasons: (pp. 96-100)

- The defendant's duty toward Karen in respect to the school building is that of an invitor to an invitee.
- ... unusual danger has been held to mean unusual from the point of view of the particular invitee.

- The defendant had knowledge of one incident of a pupil "walking through" the same panel in September, 1967... The defendant would thus be aware of the danger inherent in the entrance and the evidence shows that the panels, except for the one in question, were sandblasted so as to distinguish the panels from the door..

- I find that the glass doors and panels in the front entrance of Miller constituted an unusual danger to the infant plaintiff and that the defendant knew of the danger or ought to have known of it.

Phillips v. Regina Public School District No. 4 Board of Education and Regina Collegiate Institute, [1976] 1 C.C.L.T. 197.

Facts of the case. The infant plaintiff was nearly eighteen years of age and in Grade XII at The Regina Collegiate Institute on January 20, 1975. On this date, when school had ended for the day, the infant plaintiff and a schoolmate, Dorothea Luhning, left the school. Although the school steps were icy, they went down them safely. However, almost immediately on entering the south sidewalk which lead to the school entrance, the infant plaintiff slipped and fell on a patch of ice on the sidewalk, and suffered knee injuries.

Issue(s). Whether or not the injuries sustained by the plaintiff resulted from the alleged negligence of the school board in failing to take reasonable care regarding maintenance of an icy school sidewalk.

Reasoning applied by the court. The trial court ruled that both the defendant and plaintiff were negligent and fixed the degree of fault at 25% for the plaintiff and at 75% for the defendant. In reaching this decision, the trial court reasoned as follows: (pp. 200-207)

- The legal relationship between the plaintiff student and the defendant Board of Education was that of occupier and invitee.

- Folwark [the head maintenance engineer] did not bother going down the steps and inspecting the sidewalks although he knew of the icy conditions that had been caused by the rain. In these circumstances I find the inspection so made was casual, careless and negligent.

- An entry sidewalk built mainly for the use of infant students placed a higher duty on the occupier to keep it in a reasonably safe condition and free from unusual dangers, than, for example, would be required with respect to public sidewalks used by all citizens.

- The patch of ice so created was an unusual danger to the students who used the sidewalk that January day. The danger could have been substantially lessened by spreading sand, which was readily available, on the ice, but such was not done.

- In short the five caretaking employees did nothing to remedy or guard against the said danger and such omission was negligence on their part. I find that such negligence contributed to the plaintiff's fall and the damages that resulted therefrom.

With regard to contributory negligence, the court stated: (p. 207)

- The plaintiff owed the defendant invitor the duty to use reasonable care on her part for her own safety while upon the invitor's premises.

- She [the plaintiff] was nearly 18 years old... had reached the age of discretion and was quite capable of exercising reasonable care for her own safety and had a duty to do so.

- She failed to keep a proper lookout as to where she was walking having regard to the prevailing circumstances. The plaintiff knew of the rainfall and the resulting icy and slippery conditions of the Regina streets before she arrived at school that morning.

- She certainly knew when she left at 2:30 p.m. that the school steps were icy... she failed to use reasonable care for her own safety by avoiding the ice either by going around it or retreating a step or two and going over to the north sidewalk.

Bourgeault v. Board of Education, St. Paul's Roman Catholic School District # 20 et al., [1977] 82 D.L.R. (3d) 701.

Facts of the case. On December 18, 1975, Vivian Irene Bourgeault was 14 years of age and in Grade VII at St. Michael's School in Saskatoon, Saskatchewan.

On the day in question, the Grade VII class had been downtown participating in a carol festival, and had returned to the school around 2:10 p.m. At 2:35 p.m. the Grade VI and VII boys went to the music room for music lessons. At this time, the girls were supposed to have a physical education class, but this was virtually impossible now due to the presence of a portable stage having been assembled on the gym floor, in preparation for a Christmas concert to take place at the school on the following day. Therefore, the girls engaged themselves in making Christmas decorations for the gymnasium, a continuation of an activity that had taken place in the Grade VI and VII classrooms on previous days. The school principal, Lance Macsymic, was supervising these girls at work in the gymnasium from 2:35 p.m. to about 3:30 p.m.

At 3:25 p.m. the principal sent the girls, including Vivian, to their homeroom for dismissal at 3:30 p.m. In the homeroom, the teacher told the class upon dismissal that he was then going to leave the school and that they were to then leave for home also. It was the policy at St. Michael's School for all students to leave the school as soon as classes were dismissed for the day, unless a student(s) had special permission from a teacher to remain or was participating in an after school activity that was being supervised by a teacher.

Although the Grade VII girls went back to their homeroom for dismissal, the Grade VI girls were not required to do so. This was because their homeroom teacher, the principal, was already supervising them in the gym. So, when dismissal time arrived, the principal (thinking that final touches would take only a few minutes) requested that several girls remain and finish up what needed to be done, and then he told them to leave directly from the gym and go home. The principal left the gym at 3:30 p.m., went to his office, and then left his office to go home at 3:55 p.m.

Vivian, well aware of school policy, left her homeroom and returned to the gym after 3:30 p.m., and was still there, along with two other girls and a boy, when the school caretaker, Hoffman, looked into the gym at 4:40 p.m. and saw the boy standing on top of a eight-foot metal step ladder in order to hang a decoration. The caretaker called their attention to the boy's dangerous position and then ordered him to get down. The caretaker then left the gym.

The ladder which the students were using was ordinarily stored in the furnace room. These students, including the infant plaintiff, had brought it to the gym between 3:30 p.m. and 4:40 p.m. without anyone's permission. Not only did no staff member know about it, but no member of the teaching staff was in the school after 4:00 p.m.

Just after the caretaker left the gym, Vivian climbed to the top of the ladder to hang a decoration in a high corner. Unfortunately, she fell from the top on to the wooden floor beneath, and suffered a broken collarbone.

Issue(s). Whether or not the injury sustained by the infant plaintiff resulted from the alleged negligence of the school board in failing in its duty to adequately supervise the infant plaintiff in the gymnasium when the accident occurred.

Reasoning applied by the court. The trial court dismissed the action against the school board on the basis of the following reasons: (pp. 705-706)

- The question is: within the concept of the law, was there a duty on the defendant under the circumstances that I have recited, to supervise the plaintiff and her companions in the gymnasium at or about the time

> of the mishap? I have concluded, at least in so far as the plaintiff is concerned, that there was not.
>
> - It is most material to appreciate that in this instance, the plaintiff was aware of the normal school policy requiring departure for home on dismissal. In addition, special instructions to depart for home were given on this occasion.
>
> - I have considered whether a duty rested with the defendant to have a member of the teaching staff responsible for touring the school premises after dismissal of classes, to be sure that all students had left the building before he or she leaves as the last person, other than the caretaker, to depart the premises. If such a policy had been in force and had been followed on this occasion, this accident would almost certainly never have occurred. While the age and grade of children might prompt different responses as to whether such a duty can be said to exist, I do not believe it can be said any such duty was owed to a student of 14 years of age in her seventh grade, and who had received, when possessed with the ability to comprehend, instructions to depart for home.

In addition to the cases presented in this chapter and the preceding one, six other reported cases based on school accidents that resulted in physical injuries to students were found. However, in each of these six cases, action was barred due to the expiry of a time limitation period. 'Time limitation' is one of the defenses used against a negligence charge, as already explained in Chapter III.

The following is a chronological listing of these six cases:

1. **Duncan v. Ladysmith School Trustees**, [1931] 1 D.L.R. 176.
2. **Levine v. Board of Education of the City of Toronto**, [1933] O.W.N. 152.
3. **Ritchie v. Gale et al.**, [1935] 1 D.L.R. 362.
4. **Remenda v. Board of Sturgis School Unit No. 45 of Saskatchewan**, [1975] 1 W.W.R. 11.
5. **Colbourne et al. v. Labrador East Integrated School Board et al.**, [1980] 114 D.L.R. 742.
6. **Dalton et al. v. Roman Catholic School Board for Ferryland District**, [1981] 129 D.L.R. (3d) 394.

Analysis of Data

In compliance with the methodology section of chapter 1 of this study, the foregoing cases are analyzed by applying the research method commonly referred to as documentary analysis or content analysis. In applying this method of analysis to these cases, a broad pattern of legal reasoning emerges with respect to school board and teacher liability for school accidents causing physical injuries to students. This pattern is woven from the legal threads of reasoning applied by the courts with regard to: breach of the 'careful parent' standard, the question of adequate supervision, potentially dangerous or inherently dangerous objects or activities, occupier's liability, contributory negligence, failure to instruct properly, and school board liability for student injuries resulting from accidents during pupil conveyance. An analysis of the legal reasoning applied by the courts with respect to each of these areas follows.

Most evident from the analysis of the court cases is the firm entrenchment in our common law system of the 'careful parent' standard enunciated in the case of **Williams v. Eady** in 1893. This standard was applied by the courts in case after case that dealt with a breach of the standard of care involving teachers and school boards. Of course, inextricably intertwined with the 'careful parent' standard is the question of adequate supervision which emerged as the major issue in most of the cases which were briefed. With regard to this important issue, the courts have reasoned that if it can be shown that no amount of supervision could have prevented the accident, as in the case of an extraordinary accident, then the teacher and/or the school board would be exonerated from a negligence charge resulting from such a mishap. A good example of this is the **Scoffield** case, whereby the Ontario

Court of Appeal dismissed the action against the defendant school board by ruling that no amount of supervision would have prevented the injury sustained by a female student who was involved in a tobogganning accident on her school playground. Similar reasoning was also applied by the courts in the **Higgs** case and the **Portelance** case. As well, the courts have reasoned (as was evident in the **Adams** case, the **Portelance** case, the **Gard** case, and the **Robinson** case) that students need not be under supervision every moment during their attendance at school. This appears to be especially the case with regard to supervision during recess and lunch hour; however, the obverse appears to be the case when a student is involved in a dangerous activity. For instance, in the **Dziwenka** case, where a handicapped student was injured while using a power saw, the court stressed the point that there was a lack of "sufficiently close supervision" and felt that the instructor should have supervised the operation every moment from beginning to end.

With regard to the area over which supervision is to be enforced, the court has ruled (as in the **Pearson** case, where a student was injured by an oncoming bicycle 9 feet away from the school grounds) that school supervision does not extend beyond school premises, except in the cases of pupil transportation and class excursions. Also, if an independent contractor is working on school grounds, the responsibility of supervision cannot be delegated to him. In fact, in the **Ellis** case, whereby a student received severe head injuries as a result of being struck by a piece of pulley equipment which fell from the school roof, at which time the school roof was undergoing repairs by an independent contractor, the court stated "the fact that repairs were being effected to the school buildings made that responsibility [of supervision] all the more imperative and weighty."

In cases where there were allegations with regard to a breach of the standard of care owed to students by physical education teachers, the courts appear to focus upon four factors in an attempt to resolve the issue. These factors are:

1. Was the activity suitable to the plaintiff's age and condition (mental and physical)?
2. Was the plaintiff progressively trained and coached to do the activity properly to avoid danger?
3. Was the equipment adequate and suitably arranged?
4. Was the activity (especially, if the activity was inherently dangerous) properly supervised?

Examples of the courts' deliberation upon these factors are evident in the **McKay** case, **Myers** case, **Murray** case, and the **Hall** case. In addition, it should be noted that in the **Hall** case and the **Eaton** case the courts stressed the point that "the mere possibility of injury resulting from a game is not sufficient to establish breach of duty." Similarly, the court pointed out in the **Moddejonge** case that "the occurrence of death does not establish negligence."

Closely related to the question of adequate supervision was whether or not the activity the student participated in at the time of the accident (or the object that caused the accident) was potentially dangerous or inherently dangerous. With regard to potentially dangerous or inherently dangerous **activities**, the court reasoned in the **Myers** case that an activity such as working on the rings in a school gymnasium was an inherently dangerous activity with known risk and foreseeable consequences. That being the case, the court reasoned that adequate supervision of such an activity is essential. Also, it stressed the necessity of using proper crash pads to prevent injury in case of fall. Similarly, the court reasoned in the **Brost** case that the activity of swinging is potentially dangerous, and that danger is a foreseeable one. Consequently, the court suggested that, in the case of younger pupils, instructions should be given as to how to get on and off a swing, as well as how to swing. Again, in the **Boese** case, the court reasoned that any vertical jump is potentially dangerous and that the element of danger involved in its execution is a foreseeable one. In addition, the court stated that "It [the vertical jump] serves no useful purpose," and "careful parents are concerned when their children jump from any appreciable height."

With regard to potentially dangerous or inherently dangerous **objects**, the court pointed out in the **Magnusson** case that inherently dangerous objects are objects such as a hatchet, a naked sword or a loaded gun, that cannot be handled without a serious risk; whereas, a potentially dangerous object may be a source of danger only if there is some mischance or negligence on the part of somebody. In the **Thornton** case, for example, the court reasoned that a springboard surrounded with foam chunks was not dangerous. However, once the boys added the "box-horse" at the rear of the springboard, to enable them to gain more height and a better take-off, the court viewed this "configuration" as being inherently dangerous; and, as such, the court felt that that danger was reasonably foreseeable. Similarly, in the **Gray** case, the court reasoned that the matches and gasoline given to the pupil by the teacher to light the gasoline stove was inherently dangerous; and, as such, that danger was foreseeable. Needless to say, the teacher in this case was found to be negligent for not taking the reasonable precaution necessary to prevent such a foreseeable accident. In contrast to this, in the **Edmondson** case [where an eight-year-old boy lost his eye after being hit by the end of a bamboo pole (used for a crossbar in the high jump) after the pole had been knocked off by his brother who was doing the high jump], the court reasoned that the pole was neither potentially dangerous nor inherently dangerous; and, as such, no amount of supervision would have prevented the accident. Similarly, in the **Durham** case, where a young boy seriously injured his eye while playing with a piece of wire on the school grounds, the court noted that the piece of wire was not, in itself, a dangerous thing and that the unfortunate occurrence could not have been foreseen by anybody.

Another legal thread of reasoning that weaves its way through the cases presented in this chapter is that associated with occupier's liability. In general, students are considered as invitees while they are on school property and engaged in ordinary activities. An example of such status is explicit in the reasoning applied by the court in the **Portelance** case. Here, the court stated:

> A full and ample measure of justice will be done to children enrolled in our public or separate schools if they are accorded the measure of the law enjoyed by invitees who enter premises as of right, and, as I see it, that is their true status.

Also, in the **Sombach** case the court held that the school board's duty toward the infant plaintiff "in respect to the school building was that of an invitor to an invitee." Similarly, in the **Phillips** case, the court stated that "the legal relationship between the plaintiff student and the defendant Board of Education was that of occupier and invitee." However, in the **Brost** case, the court reasoned that "the standard of care of a school board towards its pupils is of **a higher degree than that owed to an invitee.**" (Emphasis added). Similar reasoning was applied by the court in the **Ellis** case:

> ... in view of the duty of supervision which the law imposes upon school authorities more specific care is demanded of them than that which is ordinarily required from the occupier of premises in respect of invitees thereon.

Likewise, in the **Cropp** case, the court stated

> I adopt the principle ... that the duty of care the defendant [school board] owed to the plaintiff as a pupil was higher than that ordinarily owing by an invitor to an invitee.

It may be concluded , then, that during school hours the courts will demand that the school board owes a duty to its students equivalent to, and in some cases greater than, that of an invitor to an invitee. On the other hand, in cases where there are injuries to students on school grounds **after** school hours, the courts will usually classify the student as a licensee or trespasser, thereby relieving the school board of its more stringent duty towards the student with respect to the invitor to invitee relationship. An example of this would be the **Boryszko** case where a student was injured while he and some other boys were playing "Cowboys and Indians" on school grounds after school hours. In this case, the court classified the student as a licensee rather than as an invitee. Apparently, this lower classification of the student's status was the key determining factor in exonerating the school board from the negligence charge against it. Similarly, in the **Storms** case, whereby a student, while playing on school property during the summer holidays, was struck on the head by a descending fire escape, the court ruled that "the infant plaintiff and his two companions were bare licensees in so far as the school playground was concerned, but were trespassers as to the fire escape."

Another aspect of occupier's liability that was evident in the case analysis was the presence of some object on school grounds that was viewed by the courts as constituting an unusual danger to the student. An unusual danger is defined by the court in the **Portelance** case as " one which is unusual from the point of view of the particular invitee." In the **Sombach** case, where a fourteen-year-old girl "walked through" a clear glass door at the school and suffered four lacerations to her left leg, the court reasoned that the clear glass door constituted an unusual danger to the student and that the school board ought to have known of the danger. Similarly, in the **Phillips** case, the court reasoned that a patch of ice on the school sidewalk, on which a student slipped and suffered knee injuries, created an unusual danger to the student and that the school board was remiss in its duty by not spreading sand on the ice.

In addition to guarding against unusual dangers, school boards, as occupiers of property, are under a statutory duty to keep school grounds free from rubbish and school equipment safe and in proper repair. Several cases presented in the preceding sections of this chapter indicate that some school boards were found liable in this regard: for instance, in the **Pook** case, the school board was found negligent for leaving a pile of rubbish on the school grounds which resulted in a student injuring his right leg after being pushed by another student unto the refuse; also, in the **Schultz** case, the school board was found negligent in not keeping a teeter-totter in good repair. Such negligence resulted in a six-year-old student falling and breaking his arm; similarly, in the **Cropp** case, the school board was found negligent in not keeping the school walkway in a stable condition which resulted in a student falling and seriously injuring his right hip; and, in the **Lamarche** case, the school board was found negligent for failing to properly install a swing on the school playground. The swing tipped over and resulted in an accident whereby a student became partially paralyzed and mentally impaired.

It is clear, then, from the foregoing examples that with regard to occupier's liability, school boards have a duty to their students equal to or greater than that of an invitor to an invitee; and, additionally, school boards must take the necessary precautions to make school property as safe as is reasonably possible and to warn students of concealed or unusual dangers that may be present.

Two other legal threads of reasoning were common to several of the cases; namely, the elements of assumption of risk and contributory negligence. The court makes it quite clear in the **Shade** case that

> There is a responsibility on every person, infant or adult, to exercise some degree of care for his or her safety ... it must also be recognized that one of the most important aims of education is to develop a sense of responsibility on the part of pupils, personal responsibility for their individual actions, and a realization of the personal consequences of such actions.

The court dismissed the action against the school board in the **Shade** case and held the student totally responsible for his own actions, due to his having ignored the principal's warnings to stay away from the construction site and his failure to take the necessary precautions to avoid the marker stakes which he knew to be hazardous. Similarly, in the **Ramsden** case the court held that a sixteen-year-old student was totally responsible for the injury he received to his right leg when he "voluntarily and knowingly assumed the risk for imprudently and negligently" flicking the chisel blade too close to the perimeter of the revolving sanding wheel. Likewise, in the **Storms** case the court held an eleven-year-old boy totally responsible for the injury he received when he was struck on the head by a descending fire escape located on school property after school hours. The court reasoned that the infant plaintiff did not exercise the care to be expected of a child of his age, intelligence and experience, and that "his negligence was the real direct and effective cause of the misfortune." With regard to contributory negligence on the part of students, examples of such are evident in the **Myers** case, where the student was found to be 20% negligent, the **Dziwenka** case, where the student was found to be 40% negligent, and in the **Phillips** case, where the student was found to be 25% negligent.

In a couple of cases teachers, due to their failure to instruct properly, **were** found liable for student injuries resulting therefrom. In the **James** case, for example, the chemistry teacher was found negligent for not instructing properly (in addition to not supervising properly) due to the fact that he did not request students to wear goggles when they were carrying out a dangerous experiment. Such negligence resulted in a female student suffering eye damage and facial scars from the spattering of acid used in the chemistry experiment. Similarly, in the **Hoar** case, the industrial arts teacher was found negligent for not instructing properly due to the fact that he failed to give a make-up demonstration, on how to use a particular machine known as the jointer, to a student who had been absent from the regular class. As a result, the student used the jointer improperly and severed the tips of three of his fingers.

With regard to pupil conveyance, the court has pointed out that, where a school board provides bus transportation to students after school has been dismissed, the duty of supervision does not cease the moment the students climb aboard the bus, but continues until they are dropped off at their designated bus stops. That point is well illustrated in the **Mattison** case.

In general, if an independent contractor is hired by the board to provide pupil transportation, the school board will not be held liable for student injury resulting from the contractor's negligence (see **Baldwin** case). However, as the court noted in the **Sleeman** case, if the school board is under a statutory obligation to provide pupil transportation, then it cannot escape liability for student injury even if that duty is assigned to an independent contractor.

Before truncating the analysis of the foregoing cases, there are three more points of law that need to be highlighted, although they cannot be considered to be legal threads of reasoning since they each result from one isolated case. The first has to do with the duty of the school principal to **arrange** for adequate supervision. In the **Brost** case, for example, the principal, in failing to instruct the teacher to supervise the use of the swings while they were being used by the students, was found liable for the injury received by a six-year-old girl who slipped out of the school swing and fractured the femur of her right leg. In commenting on this case, Parry (1975:76) points out that principals

> must delegate supervisory duties on a planned, organized basis with instructions to watch for potential danger areas around the school. The teacher must know what he has to do when he is on supervisory duty ... A supervisory schedule which merely lists names and times will be inadequate ... Principals, accordingly, are advised to construct written instructions, detailing the duties to be performed by teachers when on supervision.

Thus, it is the duty of the principal to arrange for adequate supervision, and the teacher is duty-bound to carry out such directives. If adequate supervision is not provided, then the school board will be held vicariously liable for the principal's negligence in the event of a student injury resulting therefrom.

The second legal point that needs to be highlighted is the law regarding parental permission slips. In the **Moddejonge** case, for instance, even though the parents of all the children signed permission slips for their child to participate in the field trip, this did not free the teacher nor the school board from liability. With regard to permission slips, Parry (1975:83) notes that "although such a practice is worthwhile, as it indicates, care, planning and concern by the school authorities, it has no legal foundation." The reason why parental permission slips have no legal foundation has been succinctly stated by MacKay (1984:143): "parents cannot sign away their children's right to sue."

The third legal point in need of being highlighted is that which deals with the failure to exercise a discretionary power. This point is dealt with in the **Holt** case, where it states explicitly that an action will not lie against a school board for failure to exercise a discretionary power even though foreseeable injury to persons or property could have been averted by the proper exercise of such power.

These three points of law, regarding the duty of the school principal to **arrange** for adequate supervision, regarding parental permission slips, and regarding failure to exercise a discretionary duty, were used in the reasoning applied by Canadian courts; but, since they are each applied in one isolated case, they are not included in the broad pattern of legal reasoning woven throughout the study. The broad pattern of legal reasoning emerging from this study, which include breach of the 'careful parent' standard, the question of adequate supervision, potentially dangerous or inherently dangerous objects or activities, occupier's liability, contributory negligence, failure to instruct properly, and school board liability for student injuries resulting from accidents during pupil conveyance, comprise an approach to determining the outcome of any similar litigation in which teachers or school boards may be sued with regard to tort liability for school accidents causing physical injuries to students.

Summary

This chapter presented briefs of reported Canadian court cases regarding alleged negligence on the part of school boards and teachers for school accidents causing physical injuries to students. The number of cases presented and the different categories used in the analysis are outlined in Table 2 on the following page.

Table 1

Categories and Number of Cases Analyzed

Main Categories	Sub-Categories	No.
Cases Regarding Accidents **outside of** Organized School Activities	Accidents before School Starts	2
	Accidents during Recess	8
	Accidents during Lunch Hour	7
	Accidents after School Hours	8
Cases Regarding Accidents **during** Organized School Activities	Accidents during Phy. Ed. Classes and Extra-Curricular Sports	12
	Accidents in School Laboratories and Industrial Shops	4
	Accidents during Class Excursions	2
	Accidents during Pupil Transportation	7
	Accidents in Regular Classroom	0
	Total	50

In addition to briefing the cases, the cases were analyzed by applying the research method commonly referred to as documentary analysis or content analysis. A close scrutiny of the reasoning applied by the courts in the fifty cases revealed a broad pattern of legal reasoning with regard to: breach of the 'careful parent' standard, the question of adequate supervision, potentially dangerous or inherently dangerous objects or activities, occupier's liability, contributory negligence, failure to instruct properly, and school board liability for student injuries resulting from accidents during pupil transportation. A summary of the key points of legal reasoning resulting from the analysis of the cases in this chapter is presented in the final chapter of this study.

CHAPTER V

SCHOOL BOARDS AND THE COURTS

It has been said that "the best way to win a lawsuit is to stay out of court" (Froese, 1986:31). Some school boards do not end up in court whereas other school boards do for similar accidents which cause similar physical injuries to students. This chapter addresses this matter by dealing exclusively with the two sub-problems posed at the beginning of this study: why do some school boards end up in court while others do not for similar accidents which cause similar physical injuries to students? and, what steps may be taken by school boards to avert potential court action with regard to school accidents which result in physical injuries to students? In addition to examining information retrieved from a thorough search of the relevant literature, these questions are addressed by examining the comments made by certain persons knowledgeable in the field of liability insurance and school law, who were interviewed by the writer in Edmonton, Alberta. They are: Judith Anderson, Solicitor, Alberta School Trustees Association; Jack Edworthy, Manager, Jubilee Insurance; and, Keith Harrison, Coordinator of Member Services, The Alberta Teachers' Association.

In response to the questions asked, Anderson stated: "the questions are very difficult to answer because it depends to a great extent on the different personalities involved." Both Edworthy and Harrison concurred. In addition, Harrison expressed the view that the legal knowledge of the superintendent would also be a factor affecting whether or not a school board would end up in court. It was his view that most superintendents would earnestly like to reach an out of court settlement and, consequently, they would put much emphasis on the art of negotiation, mediation and compromise. Furthermore, Harrison stated that "good legislation would also tend to prevent litigation."

From an insurance perspective, Edworthy (whose insurance company, **Jubilee Insurance**, insures approximately 82% of the school boards in Alberta) stated that "very few cases of student injuries have ended up in the courts"; and, in spite of the fact that Canadian courts are awarding larger and larger amounts of money for damages in cases involving physical injuries to students, Edworthy felt that there is no problem for school boards in the province of Alberta to obtain legal liability insurance. Edworthy also noted that the most common injury to students at school is injury to their teeth. Therefore, he suggested that school boards should encourage student accident insurance.

With regard to what steps school boards might take to avert litigation, Edworthy suggested that "the lines of communication should always be kept open" and that parents must be assured that the problem will be given prompt and proper attention. "Speed" was considered by Edworthy to be "very important in solving the problem"; and, he suggested that school authorities should "very early determine exactly what happened to cause the injury."

A search of the relevant literature indicated a paucity of information on the two sub-problems under investigation. The most notable information retrieved with regard to the topic under discussion was the survey recently carried out by Elmer E. Froese, who has already been mentioned briefly at the beginning of this chapter. Highlights of Froese's relevant research regarding school boards and the courts, which are pertinent to this study, follow.

In 1986, Froese surveyed a total of 71 school districts across Canada with the aim of finding out why some school boards ended up in court while others did not. Out of the 71 school districts surveyed, 44 responded. The data indicated, among other things, that each year (from 1975 to 1985) more and more school boards ended up in court. Moreover, the art of negotiation and compromise (also mentioned by Harrison in the interview section above) emerged as the most outstanding tactic used by school boards to avert court action. In fact, the data in the following table, taken from Froese's study (p. 33), illustrates this point quite clearly:

Table 2

Actions, interventions or steps taken (as pertains to cases initiated) which averted litigation or court action

	Number of times cited
1. Negotiation and compromise	20
2. Out of court (financial) settlement	13
3. Arbitration by a "third party"	7
4. Counselling (persuasion) to withdraw case	5
5. Insurance company handled and settled case	4

Survey, 1986
N = 44

In his master's thesis (1975:2) entitled "Teacher Liability and Tenure with Special Reference to Newfoundland," Parry, a lawyer and educator, hypothesized that there is a lack of court action in Newfoundland with regard to teacher liability for student injuries, etc., not "because of the perfection of those involved in the educational process" but because of the following reasons: financial considerations might have posed a drawback for parents to seek redress at law; "skillful negotiation and diplomacy beforehand" by principals, superintendents and school board officials may have averted many potential cases from ever reaching the courts; and lawyers as well as representatives of the Department of Education have played a role in helping to settle complaints out of court. In addition, Parry speculates that many cases did not end up in court because of ignorance of the law. Not ignorance in a derogatory sense but ignorance in the literal sense of "not knowing." In light of these speculations, then, it is conceivable that, if a school board is located in an affluent area of Canada, where people are better educated, not so ignorant of the law, and have the financial resources to fight a court battle, such a school board is more likely to end up in court as a result of a physical injury to a student than a school board located in an economically depressed area of Canada.

Parry also states that school boards can protect themselves against litigation by taking such measures as "attempts to prevent accidents, or, in the case of accidents, to offer protection against a charge of negligence. These measures take the form of rules, regulations and guidelines." (p. 110) John Barnes, a law professor at Carleton University, notes (1977:193) that since it has been recognized that school boards are in a vulnerable position with regard to tort liability for student injuries, most provinces have education statutes which require school boards to carry liability insurance. For instance, section 12 (1) of the **School Act** (R.S.N. 1970, c. 346) states that

> 12. ... every school board shall ... (1) effect insurance indemnifying it against liability in respect of any claim for damages or personal injury.

Similarly, section 65 (3)a of the **School Act** (R.S.A. 1970, c. 329) states that

> (3) A board shall subject to this Act and the regulations (a) keep in force a policy of insurance for the purpose of indemnifying the board and its employees in respect of damages for death or personal injury.

Several policies that school boards may consider in an attempt to minimize liability suits have been outlined by Knaak (1969). For instance, he mentions that school boards should incorporate available research in their development of policy with regard to accident prevention and safety programs for board action. Also, he suggests that every school board should have one person responsible for coordinating a safety and accident prevention policy within each school district. In addition, Knaak points out that claims against a school board could be reduced substantially if the school board implemented a system-wide periodic safety inspection of school grounds and facilities. Furthermore, in congruence with the statement made by Mr. Edworthy regarding the importance of "speed" in solving the problem, a statement made in the interview section of this chapter, Knaak states that the "expeditious handling of accidents will lessen the danger and pain to the individuals involved and will often lessen the liability of the school board " (p. 89). Moreover, he stresses the point that one of the most litigated causes of school accidents is the issue of adequacy of supervision. In this regard, Knaak notes that even though the absence of a supervisor at the time of an accident does not necessarily mean that the school board will be found liable in a negligence suit, a school board that is sincerely interested in accident prevention and liability mitigation should have a policy which calls for the **presence** of a supervisor in the following key areas:

> 1. special hazard locations such as physical education and shop apparatus and machines, and certain types of special education classes.
>
> 2. locations where the pupils are involuntarily gathered together for the convenience of the school district; these locations might include elementary children being sent out on the playground during the lunch hour, children temporarily waiting on one school location for a "shuttle" to another school; children waiting to catch a bus home; and, children gathered at school in the morning waiting to get in. (pp. 89-90)

Similarly, Orozco (1978:103) has devised "Ten Commandments" for legal liability which, if adhered to by school boards, would help avert court action regarding school accidents causing physical injuries to students; nevertheless, if a school battle did ensue, a school board's having strictly adhered to these "Commandments" would help strengthen a defense. Orozco's "Ten Commandments" for legal liability are as follows:

> 1. A procedure for accident emergencies, including a complete accident form, should be established.
>
> 2. A plan for supervision should be established.

3. Inservice education with emphasis upon
   (a) developmental needs and capabilities of participants,
   (b) first aid and emergency procedures, and
   (c) safety procedures for activities is a must.

4. Safety rules, regulations and procedures should be established and enforced.

5. Accident insurance should be carried; this will minimize many of the liability suits if the injured person does not have to make a large financial outlay.

6. There should be regular and systematic inspections of facilities, areas, and equipment, and an A-1 program of maintenance, especially preventive maintenance.

7. Programs should be based upon a progression of activities in accord with human development, skill and experience, and sufficiency of leadership and equipment areas.

8. Competent personnel only should be hired.

9. Good public relations programs should be established, including parental permissions.

10. Consult your local attorney.

In the interview section at the beginning of this chapter, Harrison expressed the view that the legal knowledge of the superintendent would be a factor affecting whether or not a school board would end up in court. This view was also expressed by Berger (1985) who felt that, in addition to having a general legal knowledge, the superintendent should be familiar with education statutes; and, "most importantly," the superintendent should "provide continued legal in-service training for his fellow administrators " (p. 32). Of course, one must not forget that when a school board ends up in court, it is usually there as a result of its vicarious liability for alleged negligence on the part of one or more of its teachers due to the school board's status as a corporation. Hence, it may be concluded that, if its teachers possess a good knowledge of school law, this could help prevent some school accidents from happening, thereby relieving the school board of potential lawsuits. In a recent Newfoundland study, Warren (1988) assessed Newfoundland teacher knowledge of school law with regard to such legal areas as sources of law, student rights, teacher rights and tort liability. His assessment was based on a school law test which he developed for the study. Warren found that "many teachers did not have a commanding knowledge of school law " (p. 104). In concluding his study, he noted that "practitioners in education have little choice but to become 'legally literate' in order to avoid legal problems when possible and to deal with them intelligently when prevention does not work " (p. 110). Clearly, then, according to the aforementioned writers and interviewees, a knowledge of school law on the part of teachers, principals, superintendents and school trustees would help reduce school accidents; and, in cases where there are school accidents causing physical injuries to students, a knowledge of school law could help avert court action.

Summary of Findings

The following is a summary of the findings extracted from the interviews and from a search of the relevant literature with regard to the two sub-problems investigated in this study.

Re: Sub-Problem # 2 - Why do some school boards end up in court while others do not, even though the accidents were similar and resulted in similar physical injuries to students?

- one school board superintendent probably possessed more legal knowledge than the superintendent of the other school board.
- the principal, superintendent, and officials of one school board were probably better at the art of negotiation and compromise than their counterparts with another school board.
- one school board might have used more speed in handling the problem than another school board.
- the lines of communication between the parents and officials of one school board were always kept open, whereas with another school board they were not.
- one school board might have been fortunate in that the parents of the injured student might have been financially unable to entertain a court case.
- one school board might have had better legal counsel than the other.
- one school board may have been fortunate due to ignorance of the law on the part of the parent(s) of the injured student.

Re: Sub-Problem # 3 - What steps may be taken by school boards to avert court action regarding school accidents which result in physical injuries to students?

- place emphasis on negotiation and compromise.

- strive for an out of court financial settlement.
- use a "third party" as an arbitrator.
- consult with insurance company officials to see if they can help settle the case.
- act expeditiously in finding out the exact facts surrounding the case.
- have a good public relations program.
- encourage student accident insurance.
- seek good legal counsel.

In addition, school boards may avert court action by taking precautionary measures to help prevent the occurrence of school accidents; such as:

- incorporate available research in policy development regarding safety programs.
- appoint a coordinator of the safety and accident prevention program for the school district, and have him or her make periodic safety inspection checks of school grounds and equipment.
- ensure adequate supervision, especially in such areas as the gym, the laboratory, and the industrial shop.

- initiate seminars and workshops for teachers and administrators based on tort law.

- hire only competent teachers, especially with regard to chemistry teachers, shop teachers, gym teachers, etc.

CHAPTER VI

SUMMARY, CONCLUSIONS, GUIDELINES, IMPLICATIONS AND RECOMMENDATIONS FOR FURTHER STUDY

Introduction

This chapter is divided into five sections. The first section gives a summary of the study. The second section presents the conclusions. The third section presents guidelines that may be followed by teachers and school boards in order to help prevent school accidents and possibly help prevent potential litigation. The fourth section presents the implications of the study. And, finally, the fifth section suggests recommendations for further study in the area of tort liability regarding physical injuries to students.

Sum[illegible]y

The overall aim of this study, as specified in the problem statement, was essentially to determine the legal status of Canadian school boards and teachers with regard to tort liability for school accidents causing physical injuries to students. In addressing this problem Canadian court cases were used, which were obtained from a computer search of reported court cases and from a careful manual search of the indices of Canadian law reports. These cases were briefed by presenting the material facts of the case, the issue(s) involved, and the reasoning applied by the court in rendering judgment. The cases were then analyzed, using the method of documentary analysis, in order to extract the common threads of legal reasoning that permeated the various cases. The analysis of the cases revealed a broad pattern of legal reasoning with regard to: breach of the 'careful parent' standard, the question of adequate supervision, potentially dangerous or inherently dangerous objects or activities, occupier's liability, contributory negligence, failure to instruct properly, and accidents during pupil transportation.

This study considered a total of seventy-one cases. Of the seventy-one cases considered, twenty-five were analyzed under the category dealing with accidents **during** organized school activities, and an equal number was analyzed under the category dealing with accidents **outside of** organized school activities. Furthermore, reference was made to twenty-one cases, including six that, even though they were based directly on school accidents causing physical injuries to students, were not analyzed because action was barred in these cases due to the expiry of a time limitation. A summary of the fifty cases which were analyzed in chapter IV is presented in Appendix B, but the main findings of the study are presented below.

Summary of Findings

The following are the main findings of this study, extracted from the analysis of the data section of chapter IV. In effect, these findings describe the legal status of Canadian school boards and teachers with regard to tort liability for school accidents causing physical injuries to students.

1. With regard to supervision, the law requires that the teacher exercise the care and prudence of a careful parent in caring for his or her child in the same or similar circumstances. This is commonly referred to as the 'careful parent' standard.

2. School boards are vicariously liable for the negligent acts of their employees provided that the latter are acting within the scope of their employment.

3. The courts have held that the degree of care owed to students by school boards is equal to and, in some cases, greater than that required of an invitor to an invitee.

4. School boards, like other corporations, are not liable for failure to exercise a discretionary duty (nonfeasance), but are liable once the duty is undertaken and improperly executed (misfeasance).

5. In addition to guarding against unusual dangers, school boards are under a statutory duty to keep school grounds free from rubbish and school equipment safe and in proper repair.

6. In general, if an independent contractor is hired by the school board to provide pupil transportation, the school board will not be held liable for student injury resulting from the contractor's negligence. However, if the school board is under a statutory duty to provide pupil transportation, then it cannot escape liability for student injury even if that duty is assigned to an independent contractor.

7. When an independent contractor is working on school grounds, the school principal cannot delegate the responsibility of supervision of students to him.

8. It is the responsibility of school principals to arrange for supervision, while teachers are duty-bound to carry out such supervision as assigned

to them by their principals; and, it is the duty of school boards to ensure that adequate supervision is arranged.

9. School boards are not responsible for accidents to students that happen outside of school premises, except in cases of pupil conveyance and field trips.

10. School boards are not liable for teacher negligence, regarding school accidents causing physical injuries to students, if it can be shown that the teacher acted outside of the scope of his/her authority.

11. Signed parental permission slips, granting students permission to participate in school field trips, are deemed to be a good practice; however, they have no legal foundation in that they do not free teachers from liability in the event of an accident causing physical injury to a student(s).

12. If it can be shown that no amount of supervision would have prevented a school accident causing physical injury to a student (such as, in the case of an extraordinary accident), then an action for alleged negligence against a teacher or school board (resulting from such an accident) would not be successful.

13. The courts have held that the mere possibility of injury resulting from a game is not sufficient to establish breach of duty.

14. Students need not be under supervision every moment during their attendance at school. However, very close supervision is required when students are involved in potentially dangerous or inherently dangerous activities, as well as in cases involving mentally and/or physically handicapped students.

15. Where there is evidence of contributory negligence on the part of the injured student, the court will decrease the amount of damages otherwise owed to him (or her) by the defendant party. The amount of decrease will be proportional to the degree of negligence.

16. If there is evidence of assumption of risk on the part of the injured student, then (s)he will not be awarded any damages by the court.

In addition to the above findings, the following is a summary of the findings extracted from the interviews and from a search of the relevant literature with regard to the two sub-problems dealt with in chapter V.

Re: Sub-Problem # 2 - Why do some school boards end up in court while others do not, even though the accidents were similar and resulted in similar physical injuries to students?

- one school board superintendent probably possessed more legal knowledge than the superintendent of the other school board.

- the principal, superintendent, and officials of one school board were probably better at the art of negotiation and compromise than their counterparts with another school board.

- one school board might have used more speed in handling the problem than another school board.

- the lines of communication between the parents and officials of one school board were always kept open, whereas with another school board they were not.

- one school board might have been fortunate in that the parents of the injured student might have been financially unable to entertain a court case.
- one school board might have had better legal counsel than the other.
- one school board may have been fortunate due to ignorance of the law on the part of the parent(s) of the injured student.

Re: Sub-Problem # 3 - What steps may be taken by school boards to avert court action regarding school accidents which result in physical injuries to students?

- place emphasis on negotiation and compromise.
- strive for an out of court financial settlement.
- use a "third party" as an arbitrator.
- consult with insurance company officials to see if they can help settle the case.
- act expeditiously in finding out the exact facts surrounding the case.
- have a good public relations program.
- encourage student accident insurance.
- seek good legal counsel.

In addition, school boards may avert court action by taking precautionary measures to help prevent the occurrence of school accidents; such as:

- incorporate available research in policy development regarding safety programs.
- appoint a coordinator of the safety and accident prevention program for the school district, and have him or her make periodic safety inspection checks of school grounds and equipment.
- ensure adequate supervision, especially in such areas as the gym, the laboratory, and the industrial shop.
- initiate seminars and workshops for teachers and administrators based on tort law.
- hire only competent teachers, especially with regard to chemistry teachers, shop teachers, gym teachers, etc.

Conclusions

1. Even though this study examined approximately twice as many reported court cases as were examined in similar studies by Lamb (1957) and Bargen (1961), the findings of this study in comparison with theirs are basically the same. Therefore, it may be concluded that the law regarding the legal status of Canadian school boards and teachers with respect to tort liability for school accidents causing physical injuries to students has remained relatively static during the past three decades.

2. As a corollary to the above conclusion, it follows that, in spite of the seemingly common belief among educators today that the law is getting tougher on teachers with regard to the tort of negligence, the results of this study do not give credence to such a belief.

Guidelines for School Boards and Teachers

A number of guidelines for school boards and teachers may be drawn from this study. If school boards and teachers were to follow these guidelines, there might be a resultant reduction in accidents causing physical injuries to students, as well as the possibility of averting potential court action that may result from some of these accidents. These guidelines based on the analysis of court cases in chapter IV follow. (NOTE: For additional guidelines regarding school boards, see the "Summary of Findings" section in this chapter.)

Guidelines for School Boards

1. Playground equipment must be safe and kept in good repair, otherwise the school board will most likely be found liable for injuries resulting to students therefrom. (see **Schultz** case and **Lamarche** case)

2. School boards cannot delegate the responsibility for supervision to a contractor (whether he is an independent contractor or not) while he is making repairs to school property. In fact, as the court stated in the **Ellis** case, "the fact that repairs were being effected to the school building made that responsibility [of supervision by the school board] all the more imperative and weighty."

3. Since the courts have established that school swings are not inherently dangerous but are considered to be potentially dangerous and that the danger becomes greater and greater as one swings higher and higher, this danger is considered a foreseeable one; thus, it is the responsibility of the school [through its agents, the teachers] to provide adequate supervision of school swings when in use by young pupils, as well as providing them with the proper instructions on how to get on and off the swing. Moreover, swings should not be placed on sloping ground. (see **Brost** case and **Lamarche** case)

4. School boards should maintain school walkways in good condition, otherwise they risk being found liable for physical injuries to students resulting therefrom. (see **Cropp** case and **Phillips** case)

5. School boards should make sure that glass doors in school buildings are sandblasted, since clear glass doors are viewed by the court as constituting an unusual danger. (see **Sombach** case)

6. If a school board is under a statutory duty to provide transportation for its pupils, then the school board is vicariously liable for injuries sustained by pupils as a result of the negligence of a bus driver whether or not the bus driver is an independent contractor. Therefore, in such circumstances, the school board should ensure that the pupils are transported with reasonable safety. In fact, with regard to transporting kindergarten children, another adult besides the bus driver could be placed on the bus to supervise these children and be responsible for seeing that each child gets off the bus at his/her designated stop. (see **Tyler** case, **Sleeman** case, **Cochrane** case, and the **Mattinson** case)

7. If school boards allow the use of firearms for target practice in schools under their jurisdiction, then they should ensure that the activity be properly supervised and under the direction of a qualified instructor. (see **Walton** case)

8. School board authorities should check school premises periodically to ensure that these premises are free from any rubbish or debris that may cause potential hazards to the safety of students. (see **Pook** case and **Durham** case)

9. As was evidenced in most of the cases involving successful actions, school boards were found to be vicariously liable for the negligent acts of teachers, provided that the teachers were acting within the scope of their employment. Therefore, school boards could help minimize school accidents if, at the beginning of each school year, they held a short workshop for teachers to emphasize the necessary precautions that teachers should take in order to help prevent school accidents.

10. In many of the cases, the main issue was whether or not the school board provided reasonable and adequate supervision to the students under its care. Therefore, it is essential that school boards ensure that reasonable and adequate supervision is provided to students both in the school and on school grounds during school hours.

Guidelines for Teachers

1. Physical education teachers should ensure that sufficient care and attention be given to spotting and that sufficient demonstration of an activity be given before that activity is attempted by a student. (see **McKay** case)

2. Physical activities that require the learning of progressive steps, as in the case of working on parallel bars, rings, gymnastics, etc., should not be rushed. (see **McKay** case and **Myers** case)

3. Physical education teachers should ensure that the equipment being used is adequate and suitably arranged, as well as ensuring that inherently dangerous activities are properly supervised. (see **Myers** case)

4. Students should be warned of the dangers of using gymnastic apparatus during times when the physical education teacher is not present. (see **Butterworth** case)

5. Physical education teachers should not allow young children to participate in a dangerous exercise which is unsuited to their strength and ability. (see **Eaton** case and **Murray** case)

6. Shop teachers should directly supervise a handicapped student from start to finish if (s)he is operating dangerous machinery. (see **Dziwenka** case)

7. Shop teachers should keep a very accurate student absentee list to ensure that, if a student is absent from a class which involves the demonstration of the operation of a dangerous machine, the student who was absent is later given a make-up demonstration before (s)he is allowed to operate that particular machine. (see **Hoar** case)

8. Science teachers should ensure that students are wearing goggles while they are performing dangerous lab experiments. (see **James** case)

9. Teachers should always take proper precautions against foreseeable

risks that may endanger the safety of students under their charge. (see **James** case, **Moddejonge** case, **Thornton** case, and **Boese** case)

10. Teachers of handicapped students must take stricter precautions with these students than would teachers of "regular" students. (see **Dziwenka** case)

11. Teachers should avoid leaving the classroom while students are engaged in regular classroom instruction, especially in the case of a science lab, a gym class, or an industrial arts class. (see **Ramsden** case)

12. Teachers must avoid allowing students to play or experiment with dangerous and explosive substances without providing the proper supervision. (see **Gray** case)

13. Principals should warn students of the danger involved in throwing around hard objects, such as snowballs, acorns, small rocks, etc., on school playgrounds. (see **Dyer** case)

14. Principals should warn students of potential dangers that may be present on the school grounds as a result of a contractor's working on the school premises. (see **Schade** case and **Boryszko** case)

15. Principals should warn students of the danger involved in sliding down banisters in school stairwells. (see **Robinson** case)

Implications

The guidelines for school boards and teachers presented in the previous section of this chapter are, in essence, the specific implications of this study. However, in addition to these specific implications, there are what may be referred to as general implications arising from the study which pertain to students, teachers, principals, school boards and teacher training institutions.

The courts in their quest for fairness and justice rely on reasoning rather than on emotion and although they will do everything within their power to uphold the rights of students, they will also hold students responsible for their actions. For instance, in several of the cases (**Dziwenka** case, **Phillips** case, **Myers** case, **Koch** case, and **Ramsden** case) students were found to be contributorily negligent, thereby freeing the teachers and school boards from partial, and, in some cases, total liability.

With regard to teachers, the study indicates that teachers have a duty to properly instruct and supervise the students under their control. Also, the study implies that teachers will not be vulnerable to charges of negligence if they ensure that activities assigned to students are reasonable and that teachers are on guard against possible foreseeable risk that may eventuate from a particular activity, especially where activities are inherently dangerous. With regard to gym teachers, the study indicates that they will not be vulnerable to negligence charges provided that the activity is suitable for the age and physical condition of the student, the student has been progressively trained, the equipment is safe and suitably arranged, and the activity is properly supervised. Similarly, the study implies that shop teachers will not be vulnerable to charges of negligence if they **instruct** students on the use of each piece of equipment, **warn** them as to its dangers, adequately **demonstrate** its correct use, and closely **supervise** all students using dangerous machines. Likewise, the study suggests that science teachers will not be vulnerable to charges of negligence if, in addition to providing adequate supervision, they ensure that all dangerous chemicals are appropriately labeled and kept in a locked storeroom, if proper instructions are given, and if the students have been told to wear protective gear.

With regard to principals, the study indicates that the onus is on principals to make very clear to teachers the exact duties to be performed when these teachers are assigned to supervision duty; specifying only the time and place of such duty is wholly inadequate. Also, principals must assign a sufficient number of teachers to supervision duty in order that student activities may be adequately supervised. In addition, they must ensure that assemblies are held periodically with students to sensitize them to school rules for their safety. As well, principals have an obligation to their staffs to arrange for teacher inservice in order to sensitize staff members with respect to tort liability for school accidents causing physical injuries to students.

With regard to school boards, the analysis of the cases has indicated that the actions against school boards were either breach of occupier's liability or breach of supervision resulting from vicarious liability whereby the boards were held responsible for the negligent acts of their teachers. This implies that school boards should develop well-defined policies to comply with the court decisions contained in this study. These policies should incorporate: a safety and accident prevention program which would ensure that all buildings and equipment on school premises are safe and kept in constant repair; appropriate rules to protect students from dangers that may result from the actions of independent contractors who, from time to time, make repairs to school buildings; rules and regulations with respect to school field trips and class excursions; plans to ensure that principals are arranging for adequate supervision of students; and, appropriate personnel practices and procedures to ensure that only competent teachers are hired. With regard to the latter, this is particularly important in the case of specialist teachers, such as physical education teachers, science teachers, etc., especially since, in a few recent cases involving negligence (see **Myers** case, **Thornton** case, and **McKay** case), the courts have tried to apply the "reasonable and competent instructor" standard to these specialist teachers rather than the 'careful parent' standard. These policy statements could then be consolidated in a handbook, as suggested by Warren (1988), and made available to all concerned.

On a more positive note, the data has indicated that during the seven year period from 1980 to 1987 there were only 2 reported court cases regarding school accidents causing physical injuries to students. However, during the previous seven years (from 1972 to 1979) there was a total of 14 reported cases. This seems to indicate a trend that, in spite of the fact that recent research indicates that school boards are faced with an increasing number of litigious actions from parents of children who have been physically injured at school, school boards are becoming more effective in employing efficient tactics in resolving these initiated cases out of court.

With regard to teacher training, this study indicates that teachers should have a thorough knowledge of school law in order to deal effectively with the many circumstances which may arise within the school and which could lead to legal disputes. However, on examining the undergraduate programs in education offered at the various teacher training institutions in Canada, the writer could not find one program that required a teacher to take a course in school law as part of his/her teacher training program. Hence, it is recommended that teacher training institutions require prospective teachers to take a course in school law as part of their undergraduate training.

Finally, implicit in the study is the notion that not only teachers but also principals, superintendents, and school board trustees would do well to absorb as much legal knowledge regarding school law as possible. Such knowledge would, in some cases, help reduce school accidents which cause physical injuries to students, and, in other cases, it would help strengthen a defense in the event that a school official was charged with a negligence suit. It is hoped that the legal knowledge pertaining to school law contained in this study will be of benefit to school officials in this regard.

Recommendations for Further Study

In order to give a broader picture of the extent of tort liability regarding school accidents causing physical injuries to students, the writer recommends that a study very similar in scope to this study be carried out whereby, instead of using reported court cases as was done in this study, an analysis of **unreported** court cases could be used as the data. No doubt there are more unreported court cases in this regard than there are reported cases.

In addition, while carrying out the research for this study, the writer encountered several **reported** Canadian court cases (based on occupier's liability for dangerous premises) that were concerned with physical injuries sustained by **teachers** as a result of accidents which occurred while they were carrying out duties within the scope of their employment. Perhaps, then, a worthwhile study could be undertaken in this regard. Although the number of reported cases may be small, such a study could be broadened to include the **unreported** Canadian court cases as well. A good data base for finding the unreported Canadian court cases (for each of these suggested studies) would be the provincial teachers' associations.

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APPENDIX A

GLOSSARY OF LEGAL TERMS

GLOSSARY OF LEGAL TERMS

Appeal - a process whereby the decision of a lower court is reviewed by a court higher in the judicial structure.

Appellant - the party that is unsuccessful at the lower court level and appeals to a higher court.

Appellee - the party in a case against whom an appeal is taken. Sometimes called the "respondent."

Damage - Compensation, either monetary or indemnity, which may be recovered by a person for injury or loss suffered as a result of defendant's wrongful conduct.

Defendant - the person against whom civil proceedings are brought by the plaintiff or the person who is accused of a crime in criminal proceedings.

In loco parentis - literally, "in place of the parent"; the term refers to a person, such as a teacher, who takes the place of a parent for certain purposes.

Litigation - contest in a court of justice for the purpose of enforcing a right or seeking a remedy.

Misfeasance - a misdeed or trespass. The improper performance of some act, which a man may lawfully do.

Nonfeasance - the omission of an act which a person ought to do.

Plaintiff - the party who commences legal proceedings by way of an action to recover damages to compensate for loss or harm caused by the defendant.

Prima facie - evidence good and sufficient on its face; such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted will remain sufficient.

Proximate cause - the act without which an injury would not have occurred. The legal cause. Act or omission immediately causing or failing to prevent injury, without which an injury would not have been inflicted.

Tort - a civil wrong or injury, other than a breach of contract, for which the court will provide a remedy in the form of an action for damages.

Tortfeasor - the person who commits a tort.

Ultra vires - beyond the powers. An act is said to be **ultra vires** a person or corporation when it falls outside the powers or authority granted.

Vicarious liability - the liability of one party for the fault of another.

APPENDIX B

SUMMARY OF CASES

A summary of the fifty cases which were analyzed in chapter IV are presented below. The format for this summary has been adapted from the formats used by Barrett (1977) and Gray (1983).

Summary of Cases

Abbreviated Case Name	Date and Province	Nature of Injury	Source of Injury	Verdict
Phys. Ed. & Sports				
1. **Walton**	1924, B.C.	eye damage	rifle practice	plaintiff
2. **Butterworth**	1940, Ont.	broken elbow	vaulting in gym	defendant
3. **Murray**	1943, Ont.	broken wrist	gymnastic pyramid	defendant
4. **Pook**	1944, Ont.	bone fractures to right leg	student scuffling with classmate	plaintiff
5. **Gard**	1946, B.C.	eye injury	game of grass hockey	defendant
6. **Hall**	1952, Ont.	fractured arm	wrestling	defendant
7. **McKay**	1968, Sask.	paraplegic	fall from parallel bars	plaintiff
8. **Piszel**	1977, Ont.	fractured elbow	wrestling	plaintiff
9. **Eaton**	1977, B.C.	broken leg	piggy-back race	defendant
10. **Thornton**	1978, B.C.	quadriplegic	gymnastics spring board	plaintiff
11. **Boese**	1979, Sask.	broken leg	jump from 7 ft. high bleachers in gym class	plaintiff

Summary of Cases - Continued

Abbreviated Case Name	Date and Province	Nature of Injury	Source of Injury	Verdict
12. **Myers**	1981, Ont.	broken neck	ring straddle dismount	plaintiff
Laboratories & Ind. Shop				
13. **Ramsden**	1942, Ont.	loss of leg below knee	revolving sanding wheel	defendant
14. **Dziwenka**	1972, Alta.	loss of two fingers	power saw	plaintiff
15. **James**	1976, Man.	eye damage and facial scars	spattering of nitric acid	plaintiff
16. **Hoar**	1984, B.C.	lost tips of three fingers	jointer machine	plaintiff
Class Excursions				
17. **Beauparlant**	1955, Ont.	non-specified severe injury	side of truck dump collapsed	defendant
18. **Moddejonge**	1972, Ont.	2 girls drowned	swimming during a field trip	plaintiff
Pupil Transportation				
19. **Tyler**	1935, Sask.	arm injury	van overturned	plaintiff
20. **Sleeman**	1975, Ont.	serious head injury	school van hit a truck	plaintiff
21. **Lovell**	1956, B.C.	fractured femur	student fell against rear of bus after getting off	defendant
22. **Finbow**	1957, Man.	loss of leg below knee	struck by oncoming truck after getting off taxicab	defendant

Summary of Cases - Continued

Abbreviated Case Name	Date and Province	Nature of Injury	Source of Injury	Verdict
23. **Baldwin**	1961, Ont.	3 students seriously injured (injuries not specified)	school bus hit by a train	defendant
24. **Mattinson**	1975, Ont.	serious head injury	struck by oncoming car after getting off school bus	plaintiff
25. **Holt**	1978, N.B.	many bone fractures and brain damage	struck by oncoming car after getting off school bus	defendant
Accidents before School Starts				
26. **Koch**	1940, Sask.	broken leg	jump from roof of school shed	defendant
27. **Scoffield**	1942, Ont.	non-specified injury	tobogganing on school playground	defendant
Accidents during Recess				
28. **Schultz**	1930, Alta.	broken arm	fall from teeter-totter	plaintiff
29. **Ellis**	1946, Sask.	severe injuries to skull & brain	piece of pulley equipment fell from school roof	plaintiff
30. **Adams**	1951, N.S.	loss of eye	stone-throwing fight	plaintiff
31. **Brost**	1955, Alta.	fractured femur	fall from swing	plaintiff
32. **Higgs**	1960, Ont.	hip bone displacement	fell on ice rink	defendant

Summary of Cases - Continued

Abbreviated Case Name	Date and Province	Nature of Injury	Source of Injury	Verdict
33. **Moffatt**	1973, Ont.	crushed fingers	lifting a piano which suddenly fell	defendant
34. **Magnusson**	1975, Sask.	serious eye injury	piece of glass thrown by classmate	defendant
35. **Cropp**	1977, Sask.	serious injury to hip	unstable temporary walkway	plaintiff
Accidents during Lunch Hour				
36. **Boivin**	1937, Sask.	broken arm	fall from ladder	defendant
37. **Gray**	1949, Ont.	serious burn to leg	lighting a gasoline stove	plaintiff
38. **Lamarche**	1956, Ont.	some paralysis and mental impairment	swing tipped over	plaintiff
39. **Dyer**	1956, N.S.	loss of eye	students throwing acorns	defendant
40. **Schade**	1959, Man.	broken elbow	tripped over construction stake	defendant
41. **Portelance**	1962, Ont.	2 boys lost total vision in left eye	playing tag in dense hawthorn bushes	defendant
42. **Robinson**	1977, Alta.	injured spleen, kidney and lung	sliding down banister	defendant
Accidents After School				
43. **Edmondson**	1920, Sask.	loss of eye	struck by sharp end of bamboo pole during high jump	defendant

Summary of Cases - Continued

Abbreviated Case Name	Date and Province	Nature of Injury	Source of Injury	Verdict
44. **Pearson**	1941, B.C.	not specified	ran into path of oncoming bicycle	defendant
45. **Durham**	1960, Ont.	severe eye injury	playing with a piece of wire found on school grounds	defendant
46. **Boryszko**	1963, Ont.	fractured foot	struck by a falling slag block	defendant
47. **Storms**	1963, Man.	head injury	hit by a descending fire escape	defendant
48. **Sombach**	1969, Sask.	severe cuts to both legs	walked through glass door	plaintiff
49. **Phillips**	1976, Sask.	knee injuries	fell on icy sidewalk	plaintiff
50. **Bourgeault**	1977, Sask.	broken collar-bone	fell from 8 ft. step ladder in gym	plaintiff